

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION (STAMP) NO.7518 OF 2018
IN
CIVIL REVISION APPLICATION NO.75 OF 2018

Damu Mohan Bahiram	 Petitioner
V/s.	
Ziprabai Tryambak Thakare	 Respondent

Mr. Sanjay P. Shinde for the Petitioner.

None for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 2ND MAY, 2018.

P.C. :

1. Heard Mr. Shinde, learned counsel for the Petitioner.
2. This Review Petition is filed seeking modification of the order dated 26th February 2018 passed by this Court, thereby rejecting Civil Revision Application No.75 of 2018.
3. It is submitted that, this Court has held that, as Regular Civil Appeal No.285 of 2015 is pending against the 'Judgment and Decree' passed in Regular Civil Suit No.70 of 2012, the bar of *res judicata* will not be applicable.

4. According to learned counsel for the Petitioner, if there is possibility of two inconsistent 'Decrees', in view of the same issues having been raised in the two Suits, then, the bar of *res judicata* becomes applicable. For this purpose, learned counsel for the Petitioner has placed reliance on the Judgment of the Hon'ble Supreme Court in the case of *Narayana Prabhu Venkateswara Prabhu Vs. Narayana Prabhu Krishna Prabhu (Dead)*, by LRs., AIR 1977 SUPREME COURT 1268. However, the facts of the reported authority reveal that, in that case, the Judgment was final in the Second Appeal, passed by the Kerala High Court, and the question before the Hon'ble Supreme Court was, '*whether there was right to appeal ?*', and in that context, it was held that, "*the question whether there is a bar of res judicata, does not depend on the existence of a right of appeal of the same nature against each of the two decisions*".

5. Here in the case, in my considered opinion, I have already held that, as the Appeal is continuation of the Suit and the findings recorded in the Suit are subject to challenge in the Appeal, I do not find any reason to review my own order or to modify or change it. Hence, the Review Petition stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]