

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Civil Application [CAO] No. 2058 of 2018
IN
Misc. Civil Application [Review] St. No. 22739 of 2018
IN
Writ Petition No. 2027 of 2018 [decided]
[George Kochaveedu Varghese Vs. Kailashchandra Kedarnath
Agrawal & another]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. R. S. Renu, Adv., for the applicant.
Shri S. C. Mehadia, Adv., for respondent no.1.

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CORAM : S. B. SHUKRE, J.

DATE : 27th November, 2018

Heard learned counsel for the applicant and Shri S. C. Mehadia, learned counsel for non-applicant no.1. Nobody appears for non-applicant no.2. Non-applicant no.2 was also absent when the Writ Petition was decided by this Court. He has also not filed any reply to the applications at Exh. 45 and Exh.65 which were on the file of the Executing Court.

For the reasons stated in the application, the application is allowed. Delay is condoned. Review Petition be registered forthwith.

Disposed of accordingly.

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Misc. Civil Application [Review] St. No. 22739 of 2018 :

Heard Shri R. S. Renu, learned counsel for the petitioner and Shri S. C. Mehadia, learned Adv., who appears for respondent no.1 by waiving notice on his behalf. Respondent no.2 is absent. He was also absent before the Executing Court. It appears that he is not interested in prosecuting this matter further, in any manner.

On going through the prayer of Writ Petition No. 2027 of 2018 and the final order passed by this Court on 31st August, 2018, I find that there is a substance in this Review Petition to the extent that the final order decides finally the application vide Exh.45. As a matter of record, what was under challenge was an order passed below an application [Exh.65] for framing an issue regarding possession of the objector - applicant, and this application was filed in the Objection Petition [Exh.45], moved under Order-XXI, Rule 97, Civil Procedure Code; but there is no order passed below the application at Exh.45. Therefore, it stands to reason that what ought to have been considered by this Court was the impugned order passed below Exh.65 for its correctness and legality. The impugned order was passed below Exh.65 and not the Objection Petition at Exh.45 itself. It

appears that there was a mistake in referring to the application vide Exh.45 and rejecting the same. This mistake being apparent on the face of the record needs to be corrected and it is directed to be corrected accordingly. It is also necessary to add a further clarification regarding deciding of the Objection Petition at Exh.45 on its own merits and in accordance with law.

In view of above, the Review Petition is partly allowed. The words in the operative portion of the order appearing in paragraph 22, dated 31st August, 2018, be deleted and substituted by the following direction :-

“The application vide Exh.65 stands rejected. No costs. The Executing Court shall decide the Objection Petition vide Exh.45 without being influenced by the observations made by this Court in this order and on its own merits and in accordance with law, as expeditiously as possible, preferably within four weeks from the date of the order.”

Disposed of accordingly.

Judge