

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.

980 CIVIL APPLICATION NO.988 OF 2019
IN
RAST/440/2019
IN
LPA/68/2013
IN
WP/1360/2012

KAILASH GOVINDLAL GOUD
VERSUS
SOMNATHAPPA NAGNATHAPPA HALGE
AND ORS.

.....

Mr. A.N.Patil Barhate, Advocate for applicant.
Mr. Rajendra Deshmukh, Advocate for R – 1.

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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATE : 25/01/2019

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ORAL ORDER:

. Learned counsel for applicant relying on the Judgments of Apex Court viz. *Chiranjil Lal (D) By L.Rs. V/s Hari Das (D) By L.Rs. reported in 2005 AIR (SC) 2564 and Ram Bachan Rai & Ors. V/s Ram Udar Rai & Ors. reported in 2006 AIR (SC) 2248* submits that the execution petition filed by the respondent/non applicant was beyond limitation from the date of decree of the trial Court. This Court while dismissing Letters Patent Appeal did not consider the law laid down by the Apex Court in the aforesaid Judgments. It has been held by the Apex Court that the limitation would start from the date of decree passed by the trial Court. In view of that, error apparent on the face of record appears in the Judgment of this

Court under review.

2. The Apex Court in the case of ***Chandi Prasad Vs. Jagdish Prasad reported in 2004 (7) Supreme 121*** has held that the Judgment of the trial Court merges with the Judgment of the appellate Court and the limitation would start from the date of decree passed by the trial Court. It has been observed by the Apex Court in the case of ***Chandi Prasad Vs. Jagdish Prasad*** [supra] that,

“22. When an appeal is prescribed under a statute and the appellate forum is invoked and entertained, for all intent and purport, the suit continues.

23. The doctrine of merger is based on the principles of propriety in the hierarchy of justice delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority. The said doctrine postulates that there can not be more than one operative decree governing the same subject matter at a given point of time.

24. It is trite that when an Appellate Court passes a decree, the decree of the trial court merges with the decree of the Appellate Court and even if and subject to any modification that may be made in the appellate decree, the decree of the Appellate Court supersedes the decree of the trial Court. In other words, merger of a decree takes place irrespective of

the fact as to whether the Appellate Court affirms, modifies or reverses the decree passed by the trial court. When a special leave petition is dismissed summarily, doctrine of merger does not apply but when an appeal is dismissed, it does. ”

3. The decree of the appellate Court was passed on 23/01/2002. The limitation for filing the execution would start running from the said date. The execution as such was well within the period of limitation. No error apparent on the face of record appears.

4. In the application for condonation of delay no plausible reasons are mentioned for delay of more than four years. More over, on merit also the applicant has not made out any case for review of the order.

5. In view of that, civil application for delay as well as review application stands rejected.

[A.M.DHAHALE]
JUDGE

[S.V.GANGAPURWALA]
JUDGE

KNP.