

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

**5 REVIEW APPLICATION (CIVIL) NO.183 OF 2019
IN SA/99/2017**

**LAXMAN BAJIBA HOLGIR (DECEASED) AND ANOTHER
VERSUS**

KACHARABAI LINGU SADGIR (DECEASED) LRS DATTU AND OTHERS

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Mr. S.T. Shelke, Advocate for the applicants

Mr. A.N. Nagargoje, Advocate for the respondent Nos.1b to 1d

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 26th AUGUST, 2019

ORDER :

1 Present application has been filed by the original appellant for review of the order passed by this Court in Second Appeal No.99 of 2017 dated 28.06.2019, thereby disposing of the appeal as not admitted and permitting the applicant to convert it into appeal from order.

2 Heard learned Advocate appearing for the review applicant, who submitted that inadvertently the Second Appeal was filed, in fact, the applicants-appellants were the original appellants before the First Appellate Court, who had filed R.C.A. No.425/1993 before District Court, Ahmednagar.

It was admitted. Thereafter it was transferred to District Court, Shrirampur and then again it was transferred to District Court, Sangamner and renumbered as R.C.A. No.356/2000. The said appeal came to be dismissed in default on 16.02.2005. Thereafter, deceased had filed Miscellaneous Application No.4/2006 for condonation of delay of 350 days in filing restoration application. It came to be restored by learned District Judge-2, Sangamner on 22.12.2016. The said order of rejection of the said application was under challenge in the Second Appeal. In fact, the said Second Appeal was not maintainable and it ought to have been an appeal from order. Since it was not pointed out, the learned Advocate prayed for review of the said order and allow the said petition to be converted into appeal from order. He relied on the decision in Commissioner, Mysore Urban Development Authority vs. S.S. Sarvesh, [(2019) 5 SCC 144], wherein it has been held that -

“When appeal was dismissed for default, it attracted Order 41 Rule 19 of CPC and appeal can be readmitted after making out sufficient cause by applicant. Order of refusal of readmission of appeal is appealable order under Order 43 Rule 1(t) of CPC, and therefore, High Court should have converted writ petition into appeal under Order 43 Rule 1(r) of CPC.”

3 At the outset, it can be seen that the order which was challenged in the Second Appeal No.99/2017 was not the order refusing to readmit the

appeal, but it was the rejection order of application for condonation of delay in filing restoration application. Therefore, there was no scope to infer that the said application before learned District Judge was under Order 41 Rule 19 of CPC. The application, which was dismissed, was under Section 5 of the Limitation Act and therefore, the ratio laid down in the above said authority is not applicable. There is no question of review of the said order, since the said proceedings was filed under Section 100 of CPC and therefore, it was necessary for this Court to see, as to whether any substantial question of law, as contemplated under Section 100 of CPC was raised. Hence, no case is made out to entertain the review, as there is no error on the face of the record. Application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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