

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

909 CIVIL APPLICATION NO.11480 OF 2018
IN CA/2294/2018 WITH CA/2294/2018
IN RC/964/2017

IBRAHIM WALEKHAN

VERSUS

SHAIKH NIZAM SHAIKH GULAB AND OTHERS

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Mr.S.W.Munde h/f Mr. V.M.Lomate,
Advocate for applicant.

Mr. N.K.Choudhari, Advocate for R – 1.

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CORAM: V.L. ACHLIYA, J.

DATE : 20/11/2019

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ORAL ORDER:

1. Heard learned counsel for applicant and respondent No. 1.

2. Mr. N.K.Choudhari, learned counsel for appellant in S.A.No. 482 of 1991 submits that no cause of action survives to prosecute these applications for the sole reason that the decree in question is already executed and possession of property has been taken by respondent No. 1. It is submitted that the Second Appeal No. 482 of 1991 was decided by this Court on merit, as against which the S.L.P. was preferred before the Apex Court. The Apex Court dismissed the S.L.P. on

27/01/2014. Thereafter, the applicant moved application seeking review which was dismissed on 25/03/2014. Subsequent thereto the applicant moved Curative Petition before Apex Court which was dismissed on 03/12/2014. Subsequent thereto the decree has been executed and possession of suit property has been handed over to decree holders. In that view, nothing survives to prosecute the application seeking review of the Judgment and decree dated 17/07/2009 passed by this Court. Learned counsel further submits that various attempts were made on the part of applicant and his son to any-how protract execution of decree by filing various applications and carrying the matter to higher Court. After loosing the battle at all levels, the application has been filed for review before this Court agitating same contentions.

3. Mr. Munde, learned counsel for applicant submits that S.L.P. was not dismissed on merit. Since the Court has not condoned the delay the S.L.P. was dismissed. In view of dismissal of S.L.P. for want of condonation of delay, the right of applicant seeking review of the Judgment and decree is not

affected. It is further submitted that the plaintiff has filed Suit simplicitor for injunction. In Appeal, the application was moved seeking amendment of plaint and claiming relief of possession. Although the Court has allowed the application, the plaint was not amended and relief of possession was claimed.

4. In counter to this submission, learned counsel for appellant in S.A. No. 482 of 2019 submits that the submission made is totally incorrect. While passing the Judgment and order in Second Appeal, this Court has specifically observed in para No. 7 that the plaint was amended and unfortunately it is ignored by the Courts below.

5. Upon due consideration of submissions advanced and taking into consideration the fact that decree is already executed, in my view no cause survives to prosecute the application. Accordingly, Civil Applications are disposed as dismissed.

[V.L.ACHLIYA]
JUDGE

KNP

