

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.497 OF 2012

Yashwant A. Patil
(Deceased through his Lrs.)
and ors.

.. Petitioners

vs.

Pandurang Dharma Madhavi and ors.

.. Respondents

Ms Neeta P. Karnik for the Petitioners.

Mr. Vachan Bodke a/w. Ms Pinky Sharma and Bhagyashri
Ranade I/b V & M Legal for Respondent Nos. 5(1) to 9-A.

CORAM : M. S. SONAK, J.

DATE : 11 MARCH 2019.

ORAL JUDGMENT:

1] Heard Ms Karnik, learned counsel for the petitioners
and Mr. Bodke, learned counsel for the respondents.

2] Rule. Rule is made returnable forthwith with the
consent of and at the request of learned counsel for the
parties.

3] The challenge in this petition is to the order dated 13
December 2011 by which the learned Ad-hoc District Judge –
2, Thane has *suo moto* reviewed the order dated 21 January
2011 made below Exhibit-6 by observing that the

Predecessor Judge ought not to have made such order.

4] The record indicates that after the order dated 21 January 2011 was made, the pleadings were amended, additional written statement was filed and even evidence was partly recorded.

4] According to me, at this stage, without there being any application on the part of the respondents seeking for any review, the learned Ad-hoc District Judge was not justified in exercising review jurisdiction *suo moto* and on such basis upsetting the order dated 21 January 2011 made below Exhibit-6. The manner in which the impugned order has been made is bound to have prejudiced the petitioners, since the petitioners were really not granted sufficient opportunity to oppose the exercise of review jurisdiction.

5] On the aforesaid short ground, the impugned order dated 13 December 2011 is hereby set aside. However, liberty is granted to the respondents to institute a review petition, if they so chose. If the review petition is instituted within four

weeks from today, then Ms Neeta Karnik, learned counsel for the petitioners, states that the same will not be opposed on the ground that it is barred by law of limitation. She however, adds that liberty be reserved to the petitioners to oppose the review petition on merits. This statement is accepted.

6] Thus, any of the respondents chose to institute review petition within four weeks from today, then the learned Ad-hoc District Judge is directed to dispose of such review petition on its own merits and in accordance with law but without adverting to the issue of limitation.

7] It is made clear that this Court has not examined the merits of the matter and the impugned order has been set aside basically on the ground that this was not a fit case for exercise of *suo moto* review jurisdiction and because no sufficient opportunity was granted to the petitioners to oppose the exercise of review jurisdiction.

8] Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

9] All concerned to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)