

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION (ST) NO. 3783 OF 2014
IN
SECOND APPEAL NO. 227 OF 2004**

Vasant Suka Kasabe and Anr. ... Appellants/Applicants

V/s.

Eknath Mahadu Kasabe (deceased) by ... Respondents
heirs.

Mr. Sachin Gite for the appellant.

Mr. Tushar N. Sonawane for the respondent.

Mr. Pushkal Mishra I.by M/s. Utangale and Co. for the appellant no. 2.

CORAM : SMT. SADHANA S. JADHAV, J

DATED : 9th December, 2019.

P.C. :

Heard learned counsel for the appellant at length.

2. The present petition is seeking relief of recalling the Judgment and Order dated 18th September 2007 passed by this Court, J.H. Bhatia, (Retired Judge), thereby upholding the Judgment and Decree passed by Additional District Judge, Nashik in Civil Appeal No. 355 of 1999 on 8th April 2002. Needless to state that the Appellate Court had upheld the Judgment and Decree passed by the IIIrd Joint Civil Judge Junior Division, Nashik in Regular Civil Suit No. 818 of 1996 dated 04.09.1999.

3. It appears from the Judgment of this Court dated 18th September 2007, that the parties were heard on merits. The learned counsel, then appearing for the appellant had submitted that the parties have no objection to uphold the judgment and decree passed by the First Appellate Court. However, the learned counsel had requested the Court to modify the operative order in the judgment of the Trial Court and with consent of the counsel for both the parties the said judgment has been delivered almost 12 years ago. Thereafter, the applicant herein had filed Civil Application No. 607 of 2009 in Civil Application (St) No. 26487 of 2008 in the present Second Appeal No. 227 of 2004 by an order dated 30th August 2013, this Court R.Y. Ganoo, (Retired Judge) had not condoned the delay of 1 year and 30 days and had observed that the said application seeking recall of the order cannot be converted in an application into Review Application as there is no legal provisions for the same, especially when the judgment and order passed by on merits. This is an subsequent application filed by the applicant seeking application for recalling the order dated 18th September 2007 and restored the second appeal to its original file.

4. In fact, earlier court had held that such an application seeking recall of the order was not maintainable. There cannot be reviewed of the order dated 30th August 2013, especially with the learned counsel when this Court had held that the said application was not maintainable.

5. The learned counsel for the applicant vehemently submits that it is a disputed question as to whether the learned counsel

appearing for the appellant had sought modification of the judgment and decree with the consent of the parties or not. However, the said question has to be determined only by considering that this would be communication between the parties and the advocate representing the parties. This Court cannot be oblivious of the fact that the 2nd Appeal was also heard on merits and only when the Court was not inclined to allow the second appeal. A prayer was made for modification of the order. The decree holder is awaiting execution of the said decree for more than 12 years.

6. Hence, the present Petition being devoid of any merits and stands dismissed.

(SMT. SADHANA S. JADHAV, J)