

¹IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION (ST.) NO.11029 OF 2019
IN
WRIT PETITION NO.14027 OF 2017

Nivrutti Murlidhar Tidke

...Applicant

vs.

Sharad Abhimanyu Vidhate

...Respondent

Ms. Jyoti Pandey, for the Applicant

Mr. Amey Deshpande, for the Respondent.

CORAM : M. S. SONAK, J.

DATE : JUNE 12, 2019
(IN CHAMBER)

P.C.:

. Heard Ms. Jyoti Pandey, learned counsel for the Applicant
and Mr. Amey Deshpande, for the Respondent.

2. This Application seeks a recall of the order dated 19th March, 2019 made in Writ Petition No.14027 of 2017. Ms. Jyoti Pandey submits that the Applicant's previous advocate applied for time to produce certain documents before the Court but failed to appear on the appointed date and produce the documents. She submits that for the fault of the advocate, client could not be made to suffer. She points out that there is a sale deed of the year 1997 in

terms of which the Applicant is the owner of the suit property in which he has put up a structure in the year 1989. She submits that the revenue authorities now proposes to demolish the said structure in pursuance of the certain order made under the Maharashtra Land Revenue Code. She submits that these are sufficient reasons to recall the order dated 19th March, 2019.

3. Mr. Deshpande, learned counsel for the Respondent opposes the application for recall. He points out that in fact the Applicant was to take instructions with regard to withdrawal of suit itself. He submits that this application is liable to be dismissed.

4. On perusal of the Civil Application, it is clear that no cause whatsoever has been made out for recall of the order dated 19th March, 2019. Up to paragraph No. 4 of the application, the Applicant, has set out what transpired in the Court. In paragraph Nos. 5 and 6, this is what the Applicant has stated:

5) The Applicant states that the Applicant's previous advocate on record sought time from this Court for filing documents for proper adjudication of matter. But the said advocate failed to appear before this Court and also failed to file said documents matter.

6) The Applicant states that the Applicant humbly prays that this Court be pleased to allow the Applicant to file the said document for proper adjudication of

matter in the interest of justice are will suffer irreparable loss if the Applicant is not allowed to place documents.

5. The aforesaid, hardly constitutes any cause for recall of the order. There is absolutely no explanation as to why the Applicant's advocate failed to appear. There is absolutely no case made out that the Applicant has made any inquiry with the previous advocate. This review has been instituted by engaging another advocate which is itself not quite proper. There is not even any averment that previous advocate on account of circumstances beyond his control failed to remain present in the Court on the appointed date.

6. The reason why the application is so sketchy is perhaps because the order dated 19th March, 2019 clearly adverts to the manner in which the Writ Petition proceeded. On 20th February, 2019 Hon'ble Justice Shri K.K.Tated made the order in which he has recorded that the matter was fully argued and when he was dictating the order, the learned counsel for the Applicant applied for some time to take instructions as to whether the Applicant seeks to withdraw Regular Civil Suit No. 169 of 2016 with liberty to proceed with the Appeal pending before the Collector. Thereafter,

instead of making any statement on this issue, the learned counsel applied for time to produce the additional documents. This indulgence was granted subject to payment of cost. However, on the adjourned date neither the Applicant nor his advocate remained present.

7. The order dated 19th March, 2019 takes into consideration the contention on behalf of the Applicant, even though the Applicant or his advocate did not been remain present on the said date. The contention which is now sought to be advanced in this recall application is hardly a contention which relates to the issue of recall. In any case, from the perusal of the Civil Suit instituted by the Applicant, it is clear that the same does not relate to the title.

8. Besides, it transpires that as against the order of the revenue authorities the Applicant, has already instituted proceeding under the Maharashtra Land Revenue Code itself. The circumstance that such proceeding may have been dismissed for default only establishes negligence on the part of the Applicant and is certainly not a ground for recall.

9. For all the aforesaid reasons, this Civil Application for recall is dismissed.

10. Normally, costs are required to be imposed but this Court refrain from imposing any cost on the Applicant.

(M. S. SONAK, J.)