

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2547 OF 2016
IN
WRIT PETITION NO.1012 OF 2014

Ganapati Laxman Bhaingade ... Applicant
V/s.

Mainabai Dattu Aarekar ... Respondents
(since deceased through LRs)

Mr. Prashant Bhavake, for the Applicant
Mr. G.N. Salunkhe, for Respondent No. 1.

CORAM: K.K. TATED, J.

DATED : JANUARY 11, 2019

P.C. :

1 Heard learned counsel for the parties.

2 By this Civil Application, the Applicant / original Petitioner is seeking recall of the order dated 29th June, 2016 passed by this Court (Shri K.K.Tated, J.) in Writ Petition No. 1012 of 2014.

3 The learned counsel for the Applicant submits that the said order dated 29th June, 2016 was passed by this Court, on the basis of statement made by the learned counsel appearing on behalf of Respondent No. 1 in Writ Petition. He submits that the advocate for Respondent No. 1 made a statement that,

Respondent No. 1 expired on 22nd January, 2015. Thereafter, the Petitioner -Plaintiff filed appropriate application in the trial Court and brought legal heirs on the Respondent No. 1 – Defendant No. 1 in Regular Civil Suit No. 30 of 2005. But in spite of this, the present applicant failed to take any steps or make any application in the present Writ Petition. He submits that on the basis of this statement made by the learned counsel for the Respondent No. 1, this Court vacated the ad-interim relief granted on 29th January, 2014.

4 The learned counsel for the Applicant/ Petitioner submits that the statement made by the learned counsel for Respondent No. 1 before this Court on 29th June, 2016 was incorrect. He submits that actually the application for bringing legal heirs of the original Defendant No. 1 was filed by legal heirs on 2nd March, 2015 being (Exhibit 187) and application filed by the Applicant on 1st April, 2015 (Exhibit 194). He submits that on 29th June, 2016 when order was passed in Writ Petition No. 1012 of 2014 both these applications were pending. He submits that to that effect the applicant made his statement on solemn affirmation in paragraph 6 of the present Civil Application which read thus:

“The Applicant states that though the Applicant not filed any application before the learned trial Court for bringing the name of anyone on record as heir of Defendant No. 1, surprisingly, the advocate for Respondent No. 1 made a submission that the Applicant-Plaintiff filed such application and the legal heirs of the Defendant No.1 are

also brought on record. The Applicant states that the said submission is factually wrong and incorrect as the Applicant-Plaintiff has filed the above referred pursis dated 1-4-2015 submitting that except the Plaintiff and Defendant Nos.2 and 3, there is no any other legal heir to the deceased Respondent No.1 – Defendant No. 1. As there is no any other legal heirs to the deceased Defendant No. 1 except parties of the suit, the Plaintiff filed the aforesaid pursis. The Applicant states that the third party Applicants filed the aforesaid application below Exh- 187 by claiming themselves as the heirs of deceased Respondent No. 1 – Defendant NO. 1 prayed for direction to the Applicant – Plaintiff to bring on record their names as heirs of the deceased Defendant No. 1. However, that application is still pending on the file of learned trial Court.”

5 On the basis of this submission, learned counsel appearing for Applicant submits that order passed by this Court on 29th June, 2016 is required to be recalled and the interim relief granted on 29th January, 2014 to be continued. He submits that if the present Civil Application is not allowed irreparable loss will be caused to the applicant.

6 On the other hand, the learned counsel appearing on behalf of original Respondent No. 1 vehemently opposed the Civil Application. He submits that on 29th June, 2016 actually the application for bringing the legal heirs on record of the deceased- Respondent No. 1 being Exhibit 187 as well as Exhibit 194 were pending before the trial Court. He submits that the Plaint was not amended on 29th June, 2016 when the Writ Petition was appeared on board before this Court. On the basis of this submission, learned counsel appearing for

Respondent No. 1 submits that there is no substance in the present Civil Application and the same is required to be dismissed.

7 At this stage, learned counsel appearing for the Applicant submits that the application filed by Respondent No. 1 below Exhibit 187 in Regular Civil Suit No. 30 of 2005 was rejected by the Civil Judge, Jr. Dn., Ajara on dated 12th September, 2018. To that effect, he has placed on record the copy of the said order. The same is restored on record and marked "X" for identification.

8. I heard both the sides. It is to be noted that admittedly on the date of order passed by this Court on 29th June, 2016 the Regular Civil Suit No. 30 of 2005 was not amended by bringing legal heirs on record of the deceased- Respondent No. 1. The said order was passed on the basis of statement made by the learned counsel appearing for Respondent No. 1.

9. Considering the submissions made by the learned counsel for the Applicant, paragraph No. 6 of the Civil Application and subsequent order passed on 12th September, 2018, I satisfy that the Applicant has made out case for allowing the Civil Application.

10. Civil Application is allowed in terms of prayer clause (b) which read thus:

(a) *“By a suitable order or direction, this Court be pleased to recall the order dated 29-06-2016 passed by this Court in the aforesaid Writ Petition No. 1012 of 2014 and accordingly restore the interim reliefs granted by this Court vide order dated 29-01-2014 in the aforesaid Writ Petition No. 1012 of 2014.”*

(b) Civil Application stands disposed of accordingly.

(c) No order as to costs.

(K. K. TATED, J.)