

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CIVIL APPLICATION (CAO) NO.1162 OF 2019

IN

MISC. CIVIL APPLICATION (STAMP) NO.11646 OF 2019

IN

SECOND APPEAL NO.171 OF 2018 (D)

(Girish Ramashankar Upadhyay and others ..vs.. Anantrai Girishbhai Upadhyay and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri P.N. Kothari, Counsel for the applicants.

CORAM : ROHIT B. DEO, J.

DATED : 19-06-2019

This application is taken out for condonation of delay in preferring review application seeking review of the judgment dated 25-4-2019 in Second Appeal 171/2018.

2. For reasons stated in the civil application, the delay is condoned.

3. The application is disposed of.

Miscellaneous Civil Application (St.) No.11646/2019

The appellants in Second Appeal 171/2018 are seeking review of the judgment dated 25-4-2019 whereby this Court dismissed the second appeal.

2. It is fairly conceded by the learned Counsel Shri

P.N. Kothari that the grounds taken in the review application were not raised either in the memo of appeal or in the course of the submissions.

3. The learned Counsel Shri P.N. Kothari is relying on the decision of the Hon'ble Apex Court in *S.N.D.P. Sakhayogam v. Kerala Atmavidya Sangham and others*, 2018(2) *Mh.L.J.* 32 to buttress the submission that the contentions raised go to the root of the case and, therefore, can be raised at any stage of the proceedings.

4. I am not inclined to agree. Firstly, I am satisfied that the contentions raised for the first time in review application do not touch the jurisdiction of the Court and secondly, considering the scope of review, I am not inclined to entertain the prayer for review on grounds which are neither raised in the memo of appeal nor are taken in the memo of appeal.

5. The substratum of the ground is that the suit filed by the original plaintiff for partition and separate possession was not maintainable in view of the pleading in the plaint that M/s. R.P. Upadhyay and Company is a partnership firm. The extension of the submission is that the learned trial Court could not have directed partition of the firm assets in the absence of prayer for dissolution of the firm. I do not find from the judgment and decree of the trial Court that there is any direction to distribute

or partition the assets of the firm. All that is done by the trial Court is to declare that the plaintiff shall have a particular share in the firm.

6. No case for review is made out.

7. The review application is dismissed.

JUDGE

adgokar