

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION STAMP NO. 24132 OF 2018
IN CIVIL APPLICATION NO. 661 OF 2018
IN APPEAL FROM ORDER NO. 8 OF 2018

Purshottam Shankar Ghodgaonkar .. Applicant

Versus

Gajanan Shankar Ghodgaonkar and others .. Respondents

...

Mr. R. R. Mantri, Advocate for applicant

Mr. S. D. Joshi, Advocate for respondent no.1

...

WITH
CIVIL APPLICATION NO. 4194 OF 2018

Gajanan Shankar Ghodgaonkar .. Applicant

Versus

Purshottam Shankar Ghodgaonkar and others .. Respondents

...

Mr. S. D. Joshi, Advocate for applicant

Mr. R. R. Mantri, Advocate for respondent no.1

...

CORAM : SUNIL P. DESHMUKH, J.

DATE : 22nd JANUARY, 2021

PER COURT :-

Heard learned counsel for the parties at quite some length.

2. Civil application has been moved seeking review of order dated 28th March, 2018 passed in civil application 4194 of 2018 in civil application no. 661 of 2018 in appeal from order no. 8 of 2018.

3. Civil application no. 4194 of 2018 had been moved on behalf of appellant in appeal from order - original plaintiff purportedly seeking recall of order dated 06-02-2018 passed in civil application no. 661 of 2018 stating exigency and hardship to the plaintiff, and interim measure was extremely necessary to stall the proceeding before trial court in right earnest. Based on the claimed exigency, the order had been passed issuing notice to the respondents in civil application no. 4194 of 2018.

4. During the course of submissions, lot of aspects are being adverted including about paragraphs no. 7 and 8 of the order on 28-03-2018, however, it stands clarified that the contents in paragraphs no. 7 and 8 are indeed submissions on behalf of plaintiff and are not observations of this court and shall not be construed to be so.

5. The contention on behalf of defendants-respondents in appeal from order / applicant in review petition, is with respect of maintainability of civil application no. 4194 of 2018. It is being referred to that recall application would not be possible from a party which had been heard, and thus, the application is not maintainable. Paragraph no. 6 of judgment of the Supreme Court in a case of *Asit Kumar Kar Versus State of West Bengal and others*, reported in, (2009) 2 SCC 703, has been relied on for said purpose.

6. Further grievance has been made in respect of service of order dated 28th March, 2018 contending that it had been served on defendants-respondents only on 24th April, 2018, just twenty four hours before the date in the high court, without letting any time and giving opportunity to the defendants-respondents.

7. According to learned counsel for defendant, conduct of the appellant has been reprehensible and had been deliberate with a view to harass the old man – the defendant. Grievance has also been made that though some papers have been received, however, proper documents including memo of appeal have not been received. Having regard to conduct and aforesaid position, review of the order has been sought.

8. On the other hand, learned counsel for appellant in appeal from order submits that if conduct of appellant is being alleged to be reprehensible, conduct of defendant has been even more reprehensible. He submits that despite being aware of proceedings in high court and notice been issued, deliberately appearance has been avoided with a view to procrastinate the matter and to see that the appeal from order is rendered nugatory.

9. Lot of things have been said on either side in respect of conduct, blaming each other. However, it does not appear to be necessary to go into the same. While in civil application no. 4194 of 2018, notice has been issued and having regard to that since the

purpose underlying the same has been worked out, it appears that, there is no point in keeping the application pending before this court. Neither civil application no. 4194 of 2018 had been moved earlier nor the review application.

10. It is being referred to that appeal from order itself is ready to be heard, and in fact, learned judge hearing appeal has passed an order on 10-01-2021 giving a last chance, I do not see any efficacy in dealing with the matter.

11. I do not consider it expedient to go into the aspects sought to be raised by either side. Thus, review application along with civil application no. 4194 of 2018 deserve to be disposed of.

12. As such, civil application no. 4194 of 2018 and review application stamp no. 24132 of 2018 stand disposed of. This order would not undermine address by parties to civil application no. 661 of 2018 afresh.

(SUNIL P. DESHMUKH)
JUDGE

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