

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

34 REVIEW APPLICATION (CIVIL) NO.193 OF 2018
IN RC/1068/2018

M/S ZUARI INDUSTRIES LIMITED

..APPLICANT

VERSUS

PRATIBHA ASHOKRAO SWAMI AND ANR

..RESPONDENTS

...
Advocate for Applicant : Mr. K.M. Gadve Patil

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CORAM : VINAY JOSHI, J.
DATE : 17.01.2022

PER COURT :-

This is an application in terms of Order 47 Rule 1 of the Code of Civil Procedure, seeking to review the order of this Court dated 18th June, 2018 passed in Civil Application No. 3984 of 2015 in First Appeal Stamp No. 5348 of 2015. The review is primarily sought on account that there was mistake or error apparent on the face of record and therefore, it requires to be corrected under review.

2. Both the respondents were served, however, they are absent to contest the proceeding.

3. The applicant had initially filed a Special Civil Suit No. 24 of 2010 in the Court of learned Civil Judge, Senior Division,

Udgir, District Latur for recovery of sum of Rs. 19,57,498/-. The said suit came to be dismissed on merit. Being aggrieved, the applicant i.e. plaintiff of the suit has filed First Appeal in this Court, however, as there was delay of around 41 days, Civil Application No. 3984 of 2015 was filed seeking condonation of delay. The said appeal was filed to this Court on account of pecuniary jurisdiction.

4. The learned counsel for the applicant has submitted that by virtue of amendment incorporated to the Maharashtra Civil Courts Act, in terms of Section 28 (C), the pecuniary jurisdiction of District Court has been enhanced to the extent of Rupees one crore. As per amended provision, when the appeal in which the amount of value of the subject matter does not exceed one crore rupees and pending before the High Court, they shall stand transferred to the concerned District Court. He has also brought to my notice administrative circular dated 1st September, 2015 by which directions were issued to take steps for transfer of pending appeal as per amended provision. It is submitted that, in view of the amendment to the Maharashtra Civil Courts Act, it was essentially duty of the office of this Court to transmit the appeal along with delay condonation application to the District Court, which is not done.

5. Coming to the impugned order passed on 18th June 2018, it reveals that, since the applicant (plaintiff/ appellant) has not taken steps to secure the presence of the respondents, therefore, this Court found it futile exercise to accede to transfer the appeal to the District Court and accordingly delay condonation application was dismissed.

6. The impugned order itself indicates that, learned counsel for the applicant has requested to this Court that, since there was enhancement of pecuniary jurisdiction of the District Court up to rupees one crore, the matter be transmitted to the concerned District Court for further process. However, this Court has expressed that, despite several opportunities, the applicant had not taken steps to secure the presence of the respondents and therefore, there is no propriety to relegate back the proceeding to the concerned District Court for further process. As a matter of fact, as per the amended provision, the matter i.e. appeal along with connected delay condonation application ought to have been transferred to the District Court having pecuniary jurisdiction to entertain the matter. It was requirement of amended provision. Therefore, the applicant has succeeded in pointing out that apparent error has been

committed while passing the impugned order which is required to be corrected under the review jurisdiction vested with the Court. In view of that following order

ORDER

- (I) Application stands allowed.
- (II) Impugned order dated 18th June, 2018 is quashed and set-aside.
- (III) Office to transmit the appeal along with delay condonation application to the concerned District court having jurisdiction.
- (IV) Review petition stands disposed accordingly.

**(VINAY JOSHI)
JUDGE**

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