

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

Civil Application (CAF) No.2697/2021
IN
First Appeal No.1602/2019

Sushilkumar s/o Motilal Sharma (Since deceased) through legal heirs **Vs.** Umeshkumar s/o
 Motilal Sharma Ors.

 Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

 Shri A.C. Dharmadhikari, Advocate for the Appellant(s).
 Shri P.M. Pande, Advocate for the Applicant/Respondent No.3.
 Ms. Mitisha Kotecha, Advocate h/f Ms. Akanksha Wanjari, Advocate for Respondent No.4
 Shri B.N. Mohata, Advocate for Respondent No.6.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 17th JANUARY, 2022.

01] By this application, the Respondent No.3 has sought recall of the judgment and order dated 11.06.2021.

02] Shri P.M. Pande, learned counsel for the Respondent No.3 states that he was not informed about the fixed date and that he is unable to argue the matter because of the situation arising from Covid-19 pandemic. He, therefore, submits that the judgment and order dated 11.06.2021 be recalled and he be given an opportunity to advance his arguments.

03] Shri A.C. Dharmadhikari, learned counsel for the Appellant submits that the Respondent No.3 had not contested the proceedings before the trial Court though duly served. He further submits that the Respondent No.3 was duly notified in the first appeal, despite which, he had chosen to remain absent and he further submits that no prejudice will be caused to the Respondent No.3 as the assets are ordered to be distributed between all legal

representatives including the Respondent No.3.

04] I have perused the records and considered the submissions advanced by learned counsel for the respective parties.

05] It is not in dispute that the Respondent No.3 was duly served before the trial Court despite which, he had chosen to remain absent and had not contested the proceedings before the trial Court. It is also not in dispute that the Respondent No.3 was served with the notice in the first appeal, and he had failed to remain present despite due service. This being the case, the contention of the Respondent No.3 that he was unable to advance his submissions because of the situation arising from Covid-19 pandemic is devoid of merits. The application has absolutely no merits and is accordingly dismissed.

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06] Ms. Mitisha Kotecha, learned counsel for the Respondent No.4/Bank states that initially directions were given to issue succession certificate in favour of all the Appellants and subsequently by order dated 26.08.2021 this Court had modified the order.

07] It is seen that by order dated 26.08.2021, this Court had not modified the directions contained in Clause 3 and 4 of the judgment and order dated 11th June, 2021. What has been modified is the directions contained in Clause 5 to 10 in the operative part of the judgment dated 11th June, 2021, wherein the word “Appellants” has been substituted by “Appellant Nos.1 and 2”. The reason for substituting the word “Appellants” with “Appellant Nos.1 and 2” has been mentioned in para 2 of the order dated 26.08.2021, which records that the Appellant No.3 is married and she is presently in

U.S.A. and she has authorised Appellant Nos.1 and 2 to do necessary acts. Hence, no further modification is warranted.

08] Parties to act on authenticated copy or downloaded copy from the official website of the Bombay High Court.

(SMT. ANUJA PRABHUDESSAI, J.)

Vijay