

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

SECOND APPEAL NO. 522 OF 2019

Shri Dilip s/o Shyamlalji Katakwar

..vs..

State of Maharashtra, thr. The Collector and ors.

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

Court's or Judge's orders

Shri V.A. Dhabe, Advocate for the appellant.
Shri M.A. Kado, A.G.P. for respondent nos. 1 to 5.

CORAM : M.S. KARNIK, J.
DATED : 28/04/2022.

Heard learned Counsel for the appellant. After arguing the matter for some time my attention is invited to an order dated 04.09.2019 passed by the Appellate Court. The order of the appellate Court reads thus :

“Perused the application and say. Heard advocates for both sides.

The relief of declaration was not claimed by the plaintiff/appellant in the Trial Court. According to the defendant/respondent said prayer is barred by the law of limitation in this appeal. The paper book is ready. At this stage the appeal is expedited and it is to be heard on next date. Considering all these aspects it would be proper to decide this application on the final hearing of appeal as all the matter before this court deserves to be considered in the interest of justice. If the relief is not claimed but if court deems it fit to grant the court may grant it at the time of adjudication in the interest of justice. The counsel to note and argue the case finally on next date.”

2. From the contents of the order it is seen that the application for amendment was filed before the Appellate Court by the appellant for a relief of declaration which was not

claimed by the plaintiffs/appellants in the Trial Court. It is the contention of the learned Counsel for the appellant that though the Court had specifically recorded in the order dated 04.09.2019, that if the relief is not claimed but if Court deems it fit to grant, the Court may grant it at the time (the words typed in the order passed by the Appellate Court are not readable), however, the parties are *ad idem* that it must be 'at the time of adjudication in the interest of justice'. Then there is a noting that the counsel to note and argue the case on the next date.

3. This Court on 10.12.2019, passed the following order on Second Appeal :

"Heard.

2. Issue notice for final disposal of the matter, on the following substantial question of law:

"Whether the First Appellate court was justified in holding that the Civil Suit relating to revenue entry is not maintainable in terms of Section 158 of the Maharashtra Land Revenue Code, 1966?"

*Notice is made returnable on 20.01.2020.
Learned A.G.P. waives notice for respondent nos.1 to 5.*

R & P be called."

4. Learned Counsel for the appellant submits that the submission on the application for amendment was infact advanced. However, from the impugned judgment and order of the Appellate Court, there is no reflection to such submission being made and the consideration of the application for amendment. Learned Counsel for the appellant therefore, on instructions, submits that the appellant would prefer an application for review of the judgment and order of the Appellate Court by bringing to the notice of the Appellate

Court that the submissions though advanced on the application for amendment was not considered by the Appellate Court.

Hence, the following order :

- (a) The appeal is allowed to be withdrawn.
- (b) This appeal was filed within the limitation. In the application for review which the appellant proposes to file before the appellate Court, the appellate Court to consider the aspect of limitation sympathetically and as the appeal in this Court was filed within the limitation and prosecuted *bona fide*, consider granting the benefit of Section 14 of the Limitation Act 1963, while considering the application for delay in filing the review application.

It is made clear that I have not made any observations on the merits of the case. All contentions are kept open.

- (c) The interim order granted by this Court 26.11.2021 shall continue to operate for 10 weeks from today.
- (d) If any application for Review is made by the appellant before the Appellate Court, then the same shall be considered on its own merits and in accordance with law.

5. Appeal is disposed of as withdrawn with liberty.

6. All civil Application/s, if any, stands disposed of accordingly.