

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

**44 REVIEW APPLICATION (CIVIL) NO.107 OF 2023
IN SA/280/2022**

**SATRAJEET GOVINDRAO BURBURE
VERSUS
RAGHUNATH BAPURAO MHETRE AND ANOTHER**

Mr. R. R. Deshpande, Advocate h/f Mrs. Priyanka Deshpande,
Advocate for the applicant
Mr. Amit Deshpande, Advocate for respondent No.1

CORAM : KISHORE C. SANT, J.

DATE : 12th SEPTEMBER, 2023

P. C.

1. Heard.

2. The application is filed seeking review of the judgment and order passed by this court dated 23-12-2022 in Second Appeal No. 280/2022. The main ground of the review is that while dismissing the appeal the court has not recorded any submission of both the parties. Neither the court has discussed as to how submissions are acceptable or not acceptable. The court has also not discussed as to how the conclusion is drawn.

The court has only considered the evidence of one of the witnesses. Other grounds are not considered. The learned advocate for the applicant relies upon the judgment in the case of Mount Carmel School Society Vs DDA reported in (2008) 2 SCC 141 wherein it is held that where particular plea is raised but is not dealt with by the judge. In the said case remedy is to file review application before the said Judge and not approaching the Hon'ble Supreme Court. In the next judgment in the case of Hasmat Ali Vs Amina Bibi and others in civil Appeal No. 7109/2021 dated 29-11-2021 the Hon'ble Apex Court has held that the Hon'ble Apex Court remitted back the matter holding that the High Court has not assigned any reason for dismissal of the appeal and on that sole ground the appeal before the Hon'ble Apex Court was allowed and the matter was remitted back to the High Court for fresh disposal.

3. Learned advocate Mr. Amit Deshpande opposes the matter. He submits that the court has considered the evidence of the person who carried measurement. Since the suit was for

removal of encroachment, material aspect was only to see as to whether there is any encroachment and that finding would be given only on the basis of measurement and the court has considered main evidence. Consideration of the main issue shows application of mind. Thus, prays for rejection of the review application.

4. On going through the judgment under review, this court finds that no submission of any of the parties are recorded, there is no discussion about the submission. Even there is no recording of submission and therefore, this court finds that case is made out to re-call the order sought to be review. In view of the same, review application is allowed. The judgment and order dated 23-12-2022 passed by this Hon'ble Court in Second Appeal No. 280/2022 stands re-called.

5. Place the appeal for admission on 12-10-2023.

[KISHORE C. SANT, J.]