

SPChauhan

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

CIVIL APPLICATION NO. 16904 OF 2022
IN
CIVIL REVISION APPLICATION NO. 98 OF 2022

Usman Khan Rashid Khan Pathan ... Applicant

Versus

Vishal Plot Vikri Kendra Partnership Firm
Through its Partner Chandrakant Kele ... Respondent

....
Mr. P.P. Mandlik – Advocate for Applicant
Mr. P.S. Gondhalekar – Advocate for Respondent
....

CORAM : GAURI GODSE, J.
DATE : 13th February, 2023

PER COURT :

1. This application is filed for recalling and / or reviewing order dated 04th August, 2022, passed in Civil Revision Application No. 98 of 2022.
2. By the said order, Civil Revision Application was disposed of as the learned Advocate for the respondent – original plaintiff had made a statement that certification of registration of the partnership firm would be placed on record in Trial Court on 08th August, 2022.
3. Learned counsel for the applicant states that no such certificate of registration was any time was placed in the Trial Court.

Learned counsel further submits that only on the statement made by the Advocate for the respondent, the Civil Revision Application was disposed of.

4. He, therefore, states that since certificate was not placed on record, it is necessary to recall the order dated 04th August, 2022, and restore the Civil Revision Application to file for hearing on merits.
5. The respondent has filed an affidavit-in-reply dated 23rd January, 2023, thereby, stating that he was not aware as to why his Advocate has made such a statement which is recorded in the order dated 04th August, 2022. The contents of the affidavit are in the nature of making allegations against the Advocate who was earlier appearing for the respondent. Hence, the learned Advocate now appearing for the respondent had requested time to file a fresh affidavit. There is a fresh affidavit dated 09th February, 2023, filed on behalf of the respondent. In the fresh affidavit that is filed, the earlier statements made in the affidavit-in-reply dated 23rd January, 2023, are withdrawn.
6. In both the affidavits that are filed on behalf of the respondent neither there is any date of registration of the partnership firm stated nor the certificate of the registration of the partnership firm is placed on record. The Civil Revision application was filed against rejection of the application under Order VII Rule

11 of the Code of Civil Procedure. It was the contention of the present applicant that since the suit which is filed in the name of partnership firm was not a registered partnership firm, the suit was barred in view of Sub-Section 2 of Section 69 of the Partnership Act, 1932.

7. I have perused the record of the Civil Revision Application. The learned counsel for the applicant is right in submitting that the Civil Revision Application was disposed off only on the statement made on behalf of the respondent that the certificate of the registration of the partnership firm would be placed on record in the trial Court. Even, today there is nothing produced on record to show that the partnership firm was registered. Neither there is any date of registration of the partnership firm on record nor any copy of certificate of registration of partnership firm is placed on record. Hence, in such circumstances, it is necessary to recall the order dated 04th August, 2022, and restore the Civil Application to file for hearing on merits.

8. Hence, for the reasons stated above, the Civil Application is allowed in terms of prayer clause 'b', which reads thus :

“b. Be pleased to recall/review impugned Order Dated : 04.08.2022 passed in Civil Revision Application No. 98/2022 and Civil Revision Application may kindly be restored to its

original position and may kindly be heard and may kindly be decided on merits.”

9. Civil Revision Application to be listed on 27th February, 2023, under the caption “For admission”.
10. Civil Application is disposed of in above terms.
11. Learned counsel appearing for the applicant states that during the pendency of the Civil Application there was an interim relief granted for stay to the further proceedings of the suit. He submits that the stay may be extended till next date.
12. Till next date, the further proceedings of Special Civil Suit No. 150 of 2022 shall remain stayed.

[GAURI GODSE]
JUDGE