

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO. 57 OF 2023
IN
WRIT PETITION NO. 8341 OF 2023

Patil Construction and Infrastructure ... Petitioner
Ltd. through its Authorised
representative

V/s.

The Municipal Commissioner, Pune ... Respondents
Municipal Corporation and Ors.

Mr. S.B. Talekar I.by Ashwin Sakolkar for petitioner.

Mr. S.L. Babar-AGP for the State.

Ms. Jasmin Purani a/w. Ms. Shraddha Jadhav I.by Mr. Shriram P
Pingle for respondent no. 2.

**CORAM : SUNIL B. SHUKRE &
RAJESH S. PATIL, J.J.**

DATE : 31st JULY 2023.

PC. :

. Heard.

2. learned counsel of the petitioner submits that the appeal
being Appeal (PPE) No. 9 of 2018, was pending at the time, when this
petition was dismissed by the final order passed by this Court on 6th
July 2023. He submits that the petitioner could not bring the fact of
pendency of the appeal to the notice of this Court and, therefore, this

Court, entered into the merits of the matter and found it fit to dismiss the petition for the reason that there was no substance in the averments made in the petition. He submits that not brining the fact of pendency of appeal is a mistake on the part of the petitioner, which has affected the merits of the matter. Now the petitioner has realised his mistake and prays before this Court for giving him a chance to prosecute this appeal on its own merit. He further submits that if it is not done, great hardship and prejudice will be caused to the petitioner, on account of the adverse order that he is facing today. He further submits that all cause of substantial justice must not be allowed to be suffered only because of one mistake committed by the petitioner and in the opinion of the learned counsel for the review petitioner, this is sufficient reason for this Court to recall the impugned order.

3. Learned counsel holding for the Pune Mahanagar Pariwahan Mahamandal Ltd i.e. respondent no.2 has no objection, if the order dated 6th July 2023 is recalled and thereafter, the petitioner is permitted to withdraw the petition, in order to enable him to prosecute this appeal on its own merit.

4. We are of the view that the reasons stated on behalf of the petitioner would prompt this Court to lean in favour of substantial

justice and that would be possible only if the order under review is recalled. The petitioner also desires to withdraw the original petition, if leave in that regard is granted, but, without recalling the order dated 6th July 2023 that course will not be available to the petitioner. Besides, learned counsel for the respondent no. 2, the contesting respondent, has no objection. Accordingly, we find that there is a sufficient reason for recalling the order dated 6th July 2023 and we do so.

5. We direct that the original petition be restored to the file of this Court forthwith.

(RAJESH S. PATIL, J)

(SUNIL B. SHUKRE, J)