

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 140 OF 2023
IN
REVIEW PETITION (ST.) NO. 13835 OF 2021
IN
SECOND APPEAL NO. 163 OF 1989

Mr. Rajendra Nahata ..Applicant

IN THE MATTER OF :

Union of India and anr. ...Appellants

V/s.

Smt. Umrao Kevalchand Bothra

(since deceased by her legal heirs) ...Respondents

Ms. Aparna Shinde for the Applicant.

None for the Respondents.

CORAM : SANDEEP V. MARNE, J.

Dated : 30 November 2023.

P.C. :

1. This application is filed for restoration of the Review Petition (St.) No. 13835 of 2021 which was withdrawn on 3 October 2022 in

view of statement made by the Counsel appearing for the review applicant on instructions from his clients. This application is filed contending that the Review Applicants never instructed the Advocate to withdraw the Review Petition. I am not convinced with the stand taken by the Applicants that the Advocate was not instructed to withdraw the Review Petition.

2. Even if the Review Petition was to be restored by allowing the present application, the same would be an exercise in futility. The order passed by this Court while restoring the Second Appeal on 21 July 2017 reads thus :

1. The above Civil Application is taken out by the Applicants / Appellants for the following reliefs:

"(a) That delay of 507 days in filing the above Application be condoned.

(b) That the above Second Appeal be restored to file and the date be fixed for hearing of the above Second Appeal".

2. All the Respondents, except Respondent Nos. 1F and 3 are served. Respondent Nos. 1F and 3 have passed away.

3 The learned Advocate for the Applicants / Appellants on instructions states that Applicants / Appellants are not aware as to who are the legal heirs of Respondent No. 1F and 3

4. Since Respondent Nos. 1F and 3 have passed away long time back, the above Second Appeal against them has abated. As regards the other Respondents, who are served, the above Civil Application is allowed and the above Second Appeal is restored to file qua the Respondents, except Respondent Nos. 1F and 3

5. The paper book submitted by the Advocate for the Applicants / Appellants is taken on record.

6. Place the above Second Appeal for bearing and final disposal in normal course. However, a copy of this order alongwith paper book shall be forthwith served on the Respondents by Speed Post / Registered Post AD and/or by hand delivery and an Affidavit proving service shall be filed on the adjourned date.

7. The above Civil Application is accordingly disposed off.

3. Thus, the Second Appeal was restored against all Respondents, except Respondent Nos. 1F and 3. Thus, qua Respondent No.3, Appeal stood abated and dismissed. Therefore, ordinarily the Judgment and Order dated 4 October 2018 passed in the Second Appeal would not bind the legal heirs of Respondent No.3 against whom the Appeal stood abated.

4. Despite this clear position, the Review Applicants were erroneously advised to seek review of the Judgment and Order dated 4 October 2018 with a prayer to recall that order and for fresh hearing of the Second Appeal. The Advocate for the Review Applicants possibly realized this position and withdrew the Review Application, on instructions, on 3 October 2022. Now the present Interim Application is filed seeking to blame the Advocate by contending that he never instructed to withdraw the Review Application.

5. I find the present application to be gross abuse of process of law. When the Second Appeal already stood dismissed qua

Respondent No.3, there is no question of legal heirs of Respondent No.3 seeking recall of order dated 4 October 2018 for grant of opportunity of hearing for deciding the Second Appeal afresh. The Review Petition itself was worthy of dismissal. It has rightly been withdrawn. I therefore do not find any reason to recall the order dated 3 October 2022. The present Interim Application, being gross abuse of process of law, is **rejected**.

SANDEEP V. MARNE, J.

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