

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

MISC. CIVIL APPLICATION NO.131/2023 IN
SECOND APPEAL NO.380/2022(D)

Vijay s/o Bapurao Pulli (alias Pilley) and others Vs.
 Lodge Berar No.28, G.L.I. Amravati (also known as Masonic Lodge) and others

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

Court's or Judge's orders

Shri C.B. Dharmadhikari, Advocate for applicants
 Shri R.L. Khapre, Senior Advocate a/w Shri K.P. Mahalle,
 Advocate for respondents

CORAM : SMT. M.S. JAWALKAR, J.
DATED : 01/03/2023

The applicants herein are seeking review of the judgment and order dated 09/01/2023 passed by this Court, mainly on the ground that the limitation was not properly appreciated. Secondly, Civil Application No.08/2022 for leading additional evidence has not been considered and decided. Thirdly, Civil Court does not have power to decide whether a particular property is a trust property or not and the power is vested with the office of Charity Commissioner. The rest of the grounds, the applicants are not pressing so far as the limitation is concerned, which is duly appreciated and considered by this Court in paragraph No.17. So far as Civil Application No.08/2022 is concerned, it was not brought to the notice of this Court nor the applicants argued on the same. However, to grant fair opportunity, I have heard the Civil Application No.08/2022.

2. The document which applicants want to produce on record is the suit filed by one Mesponic

Lodge Committee, Amravati for mandatory injunction. However, the applicants herein are neither party to the said suit nor any declaration is sought for by Mesponic Lodge Committee about ownership of the said property. As such, the document is not relevant in deciding the issue before this Court. So far as Enquiry Application No.01/2020 is concerned, it is brought to the notice of this Court by learned Counsel for non-applicants, that it came to be filed on 03/12/2019. At the relevant time, the appeal was pending and appeal came to be decided on 30/01/2020. The permission could have been sought before the District Judge when appeal was pending. As such, this application cannot be produced on record under Order 41 Rule 27 of the Civil Procedure Code. It is settled principle of law that application for taking additional evidence on record at a belated stage cannot be filed as a matter of right. The Court can consider such an application with circumspection, provided it is covered under either of the prerequisite condition incorporated in the statutory provisions itself. The discretion is to be exercised by the Court judicially taking into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such an evidence could not be led in the Court below and as to whether the applicant had prosecuted his case before the Court below diligently and as to whether such evidence is required to pronounce the judgment by the appellate court. In case the Court comes to the

conclusion that the application filed comes within the four corners of the statutory provisions itself, the evidence may be taken on record, however, the Court must record reasons as on what basis such an application has been allowed. However, the application should not be moved at a belated stage.

3. So far as grounds raised by the appellants that Civil Court does not have power to decide whether particular property is a trust property or the power is vested with the Charity Commissioner is concerned, there is no dispute over it. On the contrary, the property is recorded in the name of respondent Trust after conducting due enquiry as per the provisions of Bombay Public Trust Act. As such, this Court is not giving any finding to that effect. What is recorded by the office of Charity Commissioner, is reiterated in the present proceedings.

As such, there is no substance in Application No.131/2023 and same is liable to be dismissed. The Civil Application No. 8/2022 is hereby rejected.

4. The Review Application to that extent is allowed and the order in regard to rejection of Civil Application No.08/2022 is to be incorporated into the final order of Second Appeal dated 09/01/2023.

5. The corrected copy of order be uploaded.