



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 12579 OF 2023
IN CA/943/2023 IN SA/91/2019

Madhukar Tulshiram Sarode

...Applicant

VERSUS

Uttam Tulshiram Sarode And Others

...Respondents

.....

Mr. M. M. Patil, Advocate for Appellant

Mr. Y. B. Bolkar, Advocate for Respondents

...

CORAM : R.M. JOSHI, J

DATE : JANUARY 10, 2024

PER COURT :

1. This application is for review of order dated 01.03.2023 passed in Civil Application No. 943/2023 in Second Appeal No. 91/2019 filed for the purpose of condonation of delay and to bring Applicant Sagar Uttam Sarode on record being legal representative of deceased Respondent No. 2 on the basis of will deed dated 08.01.2019.

2. Record indicates that the said application came to be allowed in view of consent recorded by other side. Learned Counsel for Applicant i.e. Respondent in the said application maintains his statement recording no objection but claims that the same was made under misconception of the fact. It is his further contention that the copy of the application was supplied on the same day and that he was under bona fide belief that the application

pertains to bringing on record undisputed Lrs of deceased Respondent No. 2. It is his contention that will on the basis of which the impleadment is sought by said application is already challenged by the Applicants herein by filing Suit No. 269/2022, which is pending before the competent Court of law. It is his submission that the relevant facts have come to his notice after passing of the order and hence, it becomes a good ground for review of the order.

3. Learned Counsel for the Respondent/Original Applicant in CA/943/2023 opposed the application by contending that even a person in whose favour the properties are bequeathed by deceased is entitled to defend the suit after the death of deceased. To support his submissions, he placed reliance on the judgment of Supreme Court in case of Vardarajan Vs. Kankawalli and Others, (2020) 11 SCC 598.

4. Application for review is certainly maintainable if there is discovery of new fact which was not within the knowledge or could not be produced at the time of order. Aspect of due diligence is not in dispute in this case. Facts involved herein indicate that learned Counsel for the Applicant did record no objection, but under misconception of fact it was recorded. There is no dispute about the fact that the will deed dated 08.01.2019 sought to be relied by the Respondent Sagar Sarode is challenged by Applicant by filing appropriate proceedings before the competent Court of law. Had learned Counsel for Applicant knowledge

about the same, it could have been brought to the notice of the Court. Applicant would not have gained anything by not bringing the said fact to the notice of the Court, if he had knowledge thereof. The said fact was absolutely relevant for decision of Application but apparently order came to be passed in ignorance of the said relevant fact.

5. Perusal of the judgment in case of Vardarajan (supra) indicates that Hon'ble Supreme Court has held that in absence of any person seeking continuation of proceedings on behalf of deceased even one in whose favour property is bequeathed can represent estate of deceased wherein will is proved. In the instant case, admittedly there is challenge raised to the said will and which is pending before the competent Court of law. In considered view of this Court the said judgment will not help the Respondent.

6. Learned Counsel for the Applicant Respondent makes statement across the bar that the LR's of deceased are already on record. Said statement is accepted as an undertaking to this Court. In the instant case, deceased Respondent is duly represented by LRs in this proceeding. The status of the Applicant – Sagar Sarode is yet to be decided by competent Court to represent the estate of deceased. In these circumstances, there is no justification to allow him to contest present Appeal in the capacity of LR's of deceased Respondent.

7. In view of aforestated discussion, case is made out for review of

the impugned order. In the result, application is allowed. Order dated 01.03.2023 stands recalled.

(R. M. JOSHI, J.)

Malani