

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9040 OF 2024

Bhiva Kashinath Mhatre

...Petitioner

Versus

Alibai Balya Gaikwad Since Deceased

Through Legal Heirs

1.1 Prakash Undraya Gaikwad @ Gaikar & Ors.

...Respondents

Mr.Surel Shah i/by Mr. Ravi V. Asabe for the Petitioner.

Mr.Yogeshwar Bhate a/w Mr.Pravinkumar P. More for Respondent
Nos.1.1 to 1.3.

Mr. Hamid Mulla, A.G.P. for the Respondent Nos. 2 -5 – State.

CORAM : AVINASH G. GHAROTE, J.

DATE : 5th JULY 2024

P.C.:

1. The petition questions the order dated 18.06.2024 passed by the respondent No.5 in review, by which the earlier order dated 31.05.2023 (Page-60) which allowed the revision at the behest of the present petitioner, by setting aside the order dated 15.12.2022 passed by the the Additional Commissioner in appeal.

2. The learned counsel for the petitioner points out that the order dated 31.05.2023 in revision was questioned before this

Court in Writ Petition No.3000 of 2024 (Page- 61), which came to be withdrawn unconditionally and without any liberty by the order dated 05.03.2024, which resulted in the order dated 31.05.2023 attaining finality.

3. It is however submitted by the learned counsel for the petitioner, that the respondent Nos.1.1. to 1.3 had in fact already filed a review of this order dated 31.05.2023 before the respondent No.5, in which an application for condonation of delay also came to be filed. The respondent No.5, not only condoned the delay, but reviewed the order dated 31.05.2023 by the impugned order dated 18.06.2024. What is more shocking, is that while doing so, in Para 6.4 (Page-72) he records the fact of withdrawal of Writ Petition No.3000 of 2024 but brushes it aside, by holding that the withdrawal of the petition was voluntary and the petitioner would have an opportunity to challenge the order in review too.

4. It cannot be disputed by learned counsel for the respondent Nos. 1.1 to 1.3, and indeed fairly not being disputed that once Writ Petition No.3000 of 2024 was withdrawn unconditionally, the order dated 31.05.2023, attained finality. It

is also material to note that the respondent nos.1.1 to 1.3 in spite of being aware that they had already filed a review application against the order dated 31.05.2023 on 22.09.2023, they choose not to inform this court, neither sought any liberty, which is apparent from the fact that the order dated 05.03.2024 (page-61) dismisses the petition as withdrawn simpliciter. This would further indicate that the respondent Nos.1.1 to 1.3 were in fact forum hunting, which is a practice which needs to be deprecated. So also the action on the part of respondent No.5, in deciding the review in spite of noticing, that Writ Petition No.3000 of 2024 came to be withdrawn, also needs to be deprecated and this Court does so, for the reason that once it was brought to the notice of the respondent No.5 that Writ Petition No.3000 of 2024, which raised a challenge to the order dated 31.05.2023 stood withdrawn, he had no business whatsoever to entertain and continue with the review much less decide it.

5. In view of the above position, the order dated 18.06.2024 cannot be sustained and is hereby quashed and set aside.

6. The conduct of the respondent Nos.1.1 to 1.3, also needs to be noted and cannot go unpunished. Though I was of a mind, to issue suo motu contempt notices against them, however as of now keeping that option open, a cost of Rs.1,00,000/- be deposited by them in the Registry of this Court by 12th July, 2024.

7. List the matter on 12th July at Serial No.1.

(AVINASH G. GHAROTE, J.)