

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION (ST) NO.16829 OF 2024.

IN

SECOND APPEAL NO.446 OF 2015.

Jayashree Sudhakar Pandharkar

...Applicant.

Versus

Shashidhar Janardan Pandarkar

...Respondent.

Mr. Rahul Motkari a/w. Ms. Manasi Pawar for the Review Petitioner.
Mr. Ashwin Bhadang i/b Keegan Almeida for the respondent.

Coram : Sharmila U. Deshmukh, J.

Date : 24rd July, 2024.

P. C. :

1. Heard.
2. At the outset, learned counsel appearing for the review petitioner seeks leave to annex the corrected judgment under review, which was corrected subsequent to the speaking to the minutes. Leave granted. Corrected judgment to be annexed during the course of the day.
3. By the present Review Petition, review is sought of the judgment dated 27th February 2024 passed in Second Appeal No.446

of 2014.

4. Mr. Motkari, Learned counsel appearing for the Review Petitioner would submit that there is error apparent on record as the judgment does not deal with the following submissions set out in Ground (B) and (D) of the Review Petition:

(a) Shares forming part of the suit properties were not included in the succession certificate

(b) Legal notice issued by the original Appellant to Respondent No.2 was withdrawn.

(c) Review petitioners were related by blood with the deceased being cousins and thus Section 32(6) of the Indian Evidence Act was attracted.

5. He would further submit that the decision of the Apex Court in the case of ***Shakti Yezdani and Anr. vs. Jayanand Jayant Salgaonkar and Ors., 2023 SCC Online SC 1679*** is distinguishable on fact and was thus not applicable.

6. *Per contra*, learned counsel appearing for Respondent would submit that no ground for review has been made out. He would further submit that under the guise of review there cannot be any re-

arguments and re-hearing. He submits that all the submissions made by the review petitioner were considered and thus there is no ground for review.

7. Considered the submissions and perused the judgment under review.

8. The suit was filed by the Respondents for declaration that the Respondents are the legal heirs of the deceased in respect of the Demat Accounts of the deceased. The Review Petitioners were nominated by the deceased in the Demat Accounts and the same were transferred in name of the Review Petitioners. The Trial Court interpreted the provisions of Section 109 (A) of Companies Act, 1956 to mean that the nominee is entitled to all right in shares to the exclusion of all other persons. The Appellate Court concurred with the Trial Court in view of decision in case of ***Harsha Nitin Kokate vs Saraswat Co-operative Bank Ltd [2010 (3) Mh.L.J. 718]***.

9. The Second Appeal came to be admitted on the following substantial questions of law:

i) Whether the view taken by trial Court and affirmed by the 1st Appellate Court that the provisions of section 109A of the Companies Act, 1956 have an overriding effect over the existing

laws as regards the disposition of property testamentary or otherwise is correct position in law ?

ii) Whether the trial Court and the 1st Appellate Court were right in holding that upon the death of shareholder, nominee becomes entitled to the rights of shareholder to the exclusion of other legal heirs ?

iii) Whether judgment of the trial Court and the 1st Appellate Court are sound in law considering the decision of the Apex Court in the case of Shakti Yezdani vs. Jayanand Jayant Salgaonkar (2023 SCC Online SC 1679)

10. During the hearing the learned Counsel for Respondents (Original Appellants) relied upon the decision of Apex Court in ***Shakti Yezdani and Anr vs Jayanand Jayant Salgaonkar [2023 SCC Online SC 1679]*** which had settled the position in law that nomination process does not override the succession laws. The submissions of the Review Petitioners was that the Plaintiff had given up the right in respect of the shares as the application for succession certificate did not include the suit shares and legal notice had been withdrawn. One of the submission was that in view of Section 32(6) of Evidence Act, the nomination is in fact a statement of relevant fact and is to be

treated as Will of the deceased.

11. What was under consideration of the Court were the substantial questions of law framed in the context of Section 109A of Companies Act, 1956 as the Trial Court and Appellate Court had taken the view that Section 109A of Companies Act, 1956 have an overriding effect over the general laws of succession. This Court was answering the issue whether the Section 109A of Companies Act have overriding effect over the existing laws and whether the rights in the Demat account vests in the nominee to the exclusion of the legal heirs.

12. In paragraph 23 of the judgment, this Court considered the judgment of the Apex Court in ***Shakti Yezdani and Anr vs Jayanand Jayant Salgaonkar (supra)*** which had settled the issue that nomination process does not override the succession laws. In paragraph 24 this Court held that the Plaintiffs are Class II heirs and entitled to succeed to the Demat accounts of the deceased irrespective of the nomination in favour of the Review Petitioners. In paragraph 24, this Court dealt with the submission of the Review Petitioners that the succession certificate is not in respect of the Demat account which are subject matter of the suit and has held that to constitute waiver there must voluntary and intentional relinquishment of the right. This Court held that the submission that

the Plaintiffs have given up their right cannot be accepted.

13. As regards the submission that the nomination is to be held as Will of the deceased considering Section 32(6) of Evidence Act, this Court in paragraph 26 held that upon death of the shareholder, the nominee does not become entitled to the rights of the shareholder to the exclusion of the other heirs and that there is no third mode of succession that the scheme of Companies Act aims or intends to provide as held by the Apex Court. The submissions of the Review Petitioners therefore stood answered by the findings rendered by this Court.

14. Apart from the above, in case of Second Appeal, the substantial questions of law were required to be answered and were accordingly framed. The submissions which were raised during the hearing of the Second Appeal by the Review Petitioners were irrelevant for the purpose of answering the substantial questions of law which were framed at the time of admitting the appeal.

15. The next submission that the decision in the case of ***Shakti Yezdani and Anr. vs. Jayanand Jayant Salgaonkar and Ors. (supra)*** was distinguishable on facts firstly was not raised during the hearing of the Second Appeal and the reliance by this Court on the said

decision for answering the substantial questions of law would at the most render the decision in Second Appeal as an erroneous decision capable of being corrected by the higher forum.

16. It is well settled that review is not an appeal in disguise and the Review Petitioner cannot re-agitate and re-argue the submissions already advanced and decided. All arguments relevant for the purpose of deciding the questions of law framed were considered and accordingly Second Appeal was decided.

17. In light of the above, no merit in Review Petition. Review Petition stands dismissed. In view of disposal of petition, Interim/Civil Applications, if any, do not survive for consideration and stand disposed of.

[Sharmila U. Deshmukh, J.]