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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**REVIEW PETITION NO. 01 OF 2024
IN
APPEAL NO. 21 OF 2024
IN
INTERIM APPLICATION NO. 2541 OF 2023
IN
MISC. PETITION NO. 286 OF 2023**

Abha Dastane – Rao ... Petitioner/Appellant

V/s.

Mr. Prabhakar Deolankar & Ors. ... Respondents

Ms. Abha Dastane Rao Appellant in person present.
Mr. Suhas Rohile i/b Mr. S. N. Chandrachood for Respondent
No. 1.
Mr. Hemant Ghadigaonkar Respondent Nos. 2 and 3.
Mr. Pramod Pawar Respondent No. 4.
Mr. Kunal Chheda Respondent No. 5.

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATED: 27st MARCH, 2024

P.C.:

This present Review Petition is thoroughly
misconceived and devoid of merit. The Review Petition, has
been filed seeking a review of the order dated 14th February

2024 by which this Court had dismissed the caption Appeal (i.e. Appeal No. 21 of 2024). The said Appeal was filed impugning only a part of an order dated 12th January 2023 by which Interim Application filed by the Review Petitioner was rejected to the extent it sought impleadment of Respondent No. 5 (i.e. Bank of Maharashtra) as a party Respondent and certain consequential reliefs to the captioned Miscellaneous Petition which is filed under Section 301 of the Indian Succession Act, 1925 (i.e. Succession Act) for removal of Respondent No. 1 as an executor of the last will and testament of one Dr. Narayan Ganesh Dastane.

2. Ms. Dastane-Rao at the outset submitted that the order under review had failed to properly construe Section 301 of the Indian Succession Act 1925 ('Succession Act'). She submitted that the purport of the same was not only restricted to the removal of an executor / administrator but also provided for restitution of the estate of the deceased to enable the person who was substituted as executor/administrator to properly administer the estate of the deceased. She then submitted that this Court had in the order under review totally

misconstrued Section 301 of the Succession Act by restricting its application to only removal of an executor/administrator. She then placed reliance upon the judgement of the Hon'ble Supreme Court in the case of *Union of India Vs. Hansoli Devi*¹ to submit that when the words of a statute are plain and unambiguous, then the Court must give effect to the words used in statute and Courts cannot adopt a hypothetical construction which would be more consistent with objects and policy of the act.

3. We then pointed out to Ms. Dastane-Rao that the submissions being advanced were all on merits and thus beyond the scope of a review under the provisions of Order XLVII of the Code of Civil Procedure, 1908 ("CPC"). To this Ms. Dastane-Rao submitted that Order XLVII of the CPC also permitted a review where sufficient reasons were shown for the same. She submitted it was basis this that the present Review Petition had been filed. She then tendered a one page printout, stated to be from the judgement of the Hon'ble Supreme Court in the case of *Yashwant Sinha Vs. Central Bureau of*

¹ (2002) 7 SCC 273

*Investigation*² to submit that the power of review was very wide. From the said judgement, she placed reliance upon the following paragraph, viz.

"34. *The foundations, which underlie the review jurisdiction, has been examined by this Court at some length in the judgment in S. Nagaraj and others v. State of Karnataka and anothers*¹⁵:

18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way.

The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and 15 1993 Supp (4) SCC 595 fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to call an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order."

² (2020) 2 SCC 338

4. When we pointed out to Ms. Dastane Rao that the above observations were made in the context of the powers of judicial review of administrative action under Article 226 of the Constitution of India and not review as contemplated under Order XLVII of the CPC. Ms. Dastane Rao then accepted that her remedy against Respondent No. 5(i.e. the Bank of Maharashtra) would be an independent one, but submitted that the observations made by the Learned Judge in paragraphs 24 to 33 of the order dated 12th January 2024 would come in the way of Review Petitioner in any independent proceedings that may be instituted by the adopted by the Review Petitioner. She thus submitted that it was imperative that the said observations made in the order of the Learned Judge be expunged.

5. As already noted above, the present Review Petition is thoroughly misconceived and devoid of merit for the following reasons, viz.

A. Not a single submission was advanced to demonstrate how the Review Petition would be maintainable under

the provisions of Order XLVII of the CPC. The arguments advanced on the scope of Section 301 of the Succession Act are arguments on merits which we have heard and decided on merits in our order which is under review in the present Petition. Thus, reliance placed by the Appellant upon the judgment of the Hon'ble Supreme Court in the case of *Hansoli Devi* (supra) is of absolutely no relevance since that would once again call upon us to consider the ambit and scope of Section 301 on merits, which is not open to us to do in an application for review under Order XLVII of the CPC. We have already considered the ambit and scope of Section 301 of the Succession Act in the Order under review and given our findings accordingly. If the Review Petitioner is aggrieved by the same it is always open to the Review Petitioner to seek the appropriate remedy to challenge the said Order. As already noted above, a review petition is not appropriate remedy.

B. We also find the Review Petitioner's contention that this Court must expunge the observations made by the Learned Judge in paragraphs 24 to 33 of the order dated 12th January 2024 to be entirely untenable for four reasons. *First* no such contention was ever advanced when the captioned Appeal argued. *Second* the present review has been sought in respect of an order passed by this Court and not the Order of the Learned Judge. If what the Review Petitioner seeks is expunging remarks of the Learned Judge, the Review Petitioner ought to have filed an appropriate application before the Learned Judge, which the Review Petitioner has chosen not to do. *Third*, and crucially, the observations made by the Learned Judge in the order dated 12th January 2024 are clearly for the purpose of deciding the Interim Application filed by the Review Petitioner and nothing else. The same cannot in any manner operate as *res judicata* in any independent proceeding should the Appellant chose to file against Respondent No. 5 (i.e. the Bank of Maharashtra) or any of the parties to the said Interim

Application. *Fourth*, we had by our Order dated 14th February 2024 i.e. the Order of which Review has been sought made expressly clear that the Review Petitioner was at liberty to file independent proceedings against Respondent No.5.

C. As already noted above, neither of the judgements relied upon by the Review Petitioner are in any manner applicable or relevant to either the facts of the case or the scope of review. We must note here that despite this being pointed out repeatedly to the Review Petitioner, she continued making submissions and regurgitating arguments on merits. Such conduct has occasioned a considerable waste of judicial time.

6. Hence for the aforesaid reasons we dismiss the Review Petition though we were inclined to, we have refrained from imposing costs.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)