

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

***REVIEW PETITION NO. 13 OF 2018
IN
APPEAL NO. 306 OF 2012***

Ramesh Sippy

... Petitioner

V/s.

Suresh G. Sippy & Ors.

... Respondents

Mr. Shanay Shah with Ms. Umangi Shah i/b. Bachubhai Munim & Co. for the Petitioner

Mr. Archit Jayakar i/b. Jayakar & Partners for the Respondent Nos. 3 and 4

***CORAM : NITIN JAMDAR &
M.M. SATHAYE, JJ.***

DATE : 01 MARCH 2024

P.C. :-

Heard the learned Counsel for the parties.

2. This is a Review Petition seeking to review an order passed by the Appeal Bench in Appeal No. 306 of 2012 on 4 July 2012. The Appeal was directed against the judgment and order dated 18 April 2012 passed by the learned Single Judge of this Court in Notice of Motion No. 577 of 2012 in Suit No. 552 of 2012. The

Notice of Motion was disposed of by the Appeal. The Appeal arose from the ad-interim order passed. The Review Petition No.38 of 2012 was filed by the original Respondents – Review Petitioner which was rejected by the order dated 17 January 2013. Thereafter, the Respondent – Review Petitioner preferred a Special Leave Petition whereby the permission was granted to file a Second Review Petition.

3. In this Second Review Petition, on 18 August 2023 notices were issued to the Respondents. On 25 September 2023 noting that the Respondent No.1 has expired, in the Interim Application taken out for bringing the heirs on record, a notice was issued.

4. Registry had endorsed that the notices have been served and the matter was adjourned to the next date. The learned Counsel for the Review Petitioner states that all the Respondents are served including the heirs of the Respondent No.1. We proceed on this basis.

6. On 15 December 2023, when the Review Petition came up on Board, the following order came to be passed :-

“ Interim Application No.1754 of 2022 is already allowed by order dated 27 October 2023. The amendment is also carried out.

2 The review is sought of the order dated 4 July 2012 passed by the Appeal Bench of this Court of which one of us (Nitin Jamdar, J.) was a party. The Review Petition was filed for reviewing this order bearing No.38 of 2012, which was disposed of on 17 January 2013. Thereafter, the Review Petitioner had approached the Hon'ble Supreme Court whereby he was given liberty to apply for review of the order dated 4 July 2012. Hence, the present Review Petition.

3 The order dated 4 July 2012 disposing of the Appeal arose from an ad-interim order passed by the learned Single Judge in a Notice of Motion in the pending suit. The learned counsel for the Review Petitioner clarifies that the review is sought primarily on the basis of certain material which was not available when the Appeal was disposed of. Therefore, the review is not on the basis of any fundamental error but, on the basis of factual position which according to the Petitioner came to light subsequently. The learned counsel submits that appropriate course of action could be that to grant liberty to the Petitioner to apply to the learned Single Judge in the light of this facts which, according to the Petitioner, came to his notice subsequently and leaving it open to the learned Single Judge to deal with such an application made on its own merits. On the next date, the Respondent will inform their stand as to why this course of action should not be adopted.

4 List the Review Petition on Board on 25 January 2024."

Thereafter, the matter appeared on 8 February 2024 and the following order came to be passed :-

“On 15 December 2023 a detailed order was passed, recording the contention of the learned counsel for the Petitioner and calling for response from the Respondents on the said contention.

2. None appears for the Respondents though board is notified in advance. No reply to the review petition is yet filed.

3. If none appears for the Respondents on the next date, the Court will proceed on the basis that the Respondents have no objection to the course of action suggested by the learned counsel for the Petitioner as recorded in the order dated 15 December 2023, and appropriate order will be passed.

4. Stand over to 1 March 2024.

5. The learned counsel for the Review Petitioner states that this order will be intimated to the learned counsel for the Respondents.

7. Today, when the matter is called out, the learned Counsel for Respondent Nos. 3 and 4 states that due to inadvertence, on earlier dates the matter could not be attended. The other Respondents though served are not present. In the order dated 15 December 2023, the contention of the learned Counsel for the Review Petitioner was recorded as above.

8. The learned Counsel for the Respondent Nos. 3 and 4 states that such a course of action is open to any litigant and it is not

necessary to comment on the merits of the material that the Review Petitioner would produce before the learned Single Judge. Neither we intend to do so since the Petitioner has made a statement that he would apply to the learned Single Judge on the basis of the material stated to be now available and the original order which is under review is not being disturbed.

9. Considering that the suit is pending and that if there are subsequent development on subsequent material as sought to be contended, then it is always open to the parties in the suit like any other litigant to apply to the Single Judge in the pending suit with an interim application and it is for the learned Single Judge to decide the same on its own merits.

10. The learned Counsel for the Petitioner states that it may be clarified that if an application is made before the learned Single Judge, the learned Single Judge would decide the application uninfluenced by the observations made in the order under Review.

11. Since the Review Petition is being disposed of in the above circumstances and a fresh application is being made before the learned Single Judge, it is for the learned Single Judge to consider the implications of the order dated 4 July 2012 and take a view as the learned Single Judge thinks it appropriate.

12. With the above observations, the Review Petition is disposed of.

M.M. SATHAYE, J.

NITIN JAMDAR, J.

JYOTI
PRAKASH
PAWAR

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by JYOTI
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Date: 2024.03.05
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