



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 6080 OF 2025
IN RAST/11801/2025 WITH
CIVIL APPLICATION NO. 6081 OF 2025
IN RAST/11801/2025

Bhausahab Gulabrao Bhosale L.rs.
Janardhan And Others

VERSUS

Nathu Bapurao Khillare Lrs.
bhagwaj Nathu Khillare And Others

...

Mr. V. D. Salunke, Advocate for Applicants

Mr. S. D. Jaybhar h/f Mr. D. R. Jaybhar, Advocate for
Respondents

CORAM : R. M. JOSHI, J
DATE : OCTOBER 09, 2025

PER COURT :

1. By consent of both sides, Civil Application No. 6080/2025, which is for condonation of delay in filing review, stands allowed. Review Application is heard finally by consent of both sides.

2. This Review is filed taking exception to the judgment and order of this Court dated 10.01.2025 passed in Second Appeal No. 393/1994 solely on the ground that on the basis of documents, now sought to be placed on record, the findings recorded by this Court deserve interference.

3. Learned Counsel for the Applicant/Original Defendant submits that there is more than sufficient evidence on record to indicate that the possession of the suit property was with the vendor of the Defendant and in ignorance of the said fact, and the documents, the order impugned came to be passed. It is his submission that once the findings were recorded by the Trial Court upheld by the First Appellate Court with regard to the possession of the Defendant over the suit property, the findings recorded by this Court, more particularly, in paragraph 15 of the impugned judgment, do not stand. According to him, the said document goes to the root of the matter.

4. The entire case of the Applicant is based upon the fact that he is seeking from this Court to review this order on the basis of documents, which are filed now, admittedly were not on the record during the trial so also before Second Appellate Court.

5. At this stage, it would be relevant to take note of Order XLVII, Rule 1 of Code of Civil Procedure, which reads thus:

1. Application for review of judgment

(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

6. The said provision clearly indicates that though it is open to seek review of an order on discovery of new and important matter or evidence, however, the said matter or evidence was not within his knowledge or could not be brought after exercise of due diligence. Thus, it is necessary for the Applicant who at first instance to ensure that there was due

diligence on his part during the course of trial so also before this Court during the hearing of second appeal and in spite of due diligence, the documents now sought to be placed on record could not have been placed on record.

7. Though it is sought to be argued on behalf of Applicant that the Applicant is subsequent purchaser of the suit property and was not aware of the previous transactions between the vendor and the person who had transferred property in her name. Even if it is so, it is a matter of fact that the Applicant was heard in the original suit. He took defence of Plaintiff not being tenant so also not in possession of the suit property. Applicant, therefore, was fully conscious of the fact that it is for him to substantiate his contention by leading evidence before Trial court. Admittedly, now the documents sought to be placed on record are much prior in time of filing of suit also. Thus, this is not the case wherein any subsequent development has occurred which has led Applicant to discover any new fact.

8. The requirement of due diligence has not been

satisfied. This requirement is absolutely necessary in view of the fact that any party who is unsuccessful can be permitted to bring on record the documents, which are within his knowledge or he has not attempted to place the same on record by exercising due diligence. If any party fails to produce evidence on record, would suffer for lapse on his part. To allow any such attempt on the part of the parties would lead to the non conclusion of the proceedings at any point of time. Precisely by keeping this in mind the provisions of Order XLVII of Code of Civil Procedure requires due diligence must be shown by the party in order to seek the review of the order from discovery of any new and important matter or evidence.

9. Since no due diligence has been shown, it would not been open for the Applicant to seek review of the order on the basis of documents, which according to him, were available but not produced before the Court below. He would suffer for non production of documents during trial and appeal.

10. In so far as arguments with regard to findings recorded by this Court in paragraph 15 is concerned,

the said paragraph and the findings recorded therein are self explanatory. In such circumstances, this Court finds no substance in the review. In the result, review stands dismissed.

11. Pending civil application, if any, stands disposed of.

(R. M. JOSHI, J.)