

HARSHADA H. SAWANT  
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.122 OF 2024  
IN  
WRIT PETITION (ST.) NO.20456 OF 2024

Zhumberlal Dnyaneshwar Murkute

.. Petitioner

**Versus**

Manda Ankush Jadhav (since deceased through  
legal heirs) Ankush Sadashiv Jadhav and Ors.

.. Respondents

.....

- Mr. Sudhir Sadavarte, Advocate for Petitioner.
- Mr. Chaitanya B. Nikte a/w. Mr. Ritvij A. Kale, Advocates i/by Mr. Prajit S. Sahane for Respondent No.1.

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**CORAM : MILIND N. JADHAV, J.**

**DATE : JANUARY 08, 2025**

**P.C.:**

**1.** Heard Mr. Sadavarte, learned Advocate for Petitioner and Mr. Nikte, learned Advocate for Respondent No.1.

**2.** This review Petition is filed by Review Petitioner for seeking review of order dated 31.07.2024 which is appended at page No.141. By virtue of that order, this Court directed learned Trial Court to decide Application filed below Order IX Rule 13 of the Code of Civil Procedure, 1908 (for short '**CPC**') i.e. as expeditiously as possible in view of said Application having been filed and not decided by Court.

**3.** This order came to be passed in view of the fact that if the said Application would be decided it would go to the root of the matter and determine the substantive rights of the parties. The reason is the

proceedings being taken out in Regular Darkhast proceedings which has been noted by the Court. Because it was an *ex parte* decree and Regular Darkhast proceedings were proceeded with, the Court passed the order dated 31.07.2024 directing the learned Trial Court to decide the Application. The said order therefore relegated the hearing of the Application before Trial Court.

**4.** Mr. Sadavarte, learned Advocate appearing for Review Petitioner who was Respondent before me in Writ Petition would submit that he has grievance with respect to part of the decree *qua* his clients to the extent of the stay granted. Today, the position is that pursuant to passing of order dated 31.07.2024, learned Trial Court has by virtue of judgment dated 08.10.2024 finally decided the Application below Order IX Rule 13 of CPC which was filed below Exhibit-70 before the Trial Court. The copy of the said order is placed before me by Mr. Nikte. The *ex parte* decree stands set aside by a reasoned and speaking order. The Review Petition was filed on 16.08.2024 and the judgement in the Application under Order IX Rule 13 has been stated on 08.10.2024. The remand of the matter on the basis of order dated 31.07.2024 stands fully worked out. The order which is passed is against review Petitioner and if review Petitioner is aggrieved, it shall be open to Review Petitioner to avail the remedy as available to him in law. It is clarified that no further order is required to be passed in the Review Petition.

**5.** Needless to state that all contentions of parties including any defence available to the Review Petitioner to challenge the order including that the Application filed below Order IX Rule 13 of CPC was not by all Defendants is expressly kept open to be decided in appropriate proceedings as available in law.

**6.** Review Petition is disposed.

H. H. SAWANT

[ MILIND N. JADHAV, J. ]

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