



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH
CIVIL APPELLATE JURISDICTION**

**MISCELLANEOUS CIVIL APPLICATION NO. 122 OF 2022
ALONGWITH
CIVIL APPLICATION NO. 179 OF 2022
IN
SECOND APPEAL NO. 147 OF 2021**

Girish s/o Ramshankar Upadhyay
and Another

...Applicants

vs.

Sharad s/o Ramshankar Upadhyay
and Others

...Respondents

**ALONGWITH
MISCELLANEOUS CIVIL APPLICATION NO. 123 OF 2022
ALONGWITH
CIVIL APPLICATION NO. 180 OF 2022
IN
SECOND APPEAL NO. 148 OF 2021**

Girish s/o Ramshankar Upadhyay
and Others

...Applicants

vs.

Anatrai s/o Ramshankar
Upadhyay and Others

...Respondents

Mr. R. M. Bhangde a/w Mr. Ninad Lande	Advocate for the Applicant
Mr. R. D. Hajare a/w Ms. Kalyani Joshi	Advocate for the Respondent Nos. 1, 2(a), 4, 6, 8 and 9.

CORAM : S. M. MODAK, J.

**DATE : 14th FEBRUARY 2025
(IN CHAMBER- through V.C.)**

P.C. :-

1. Heard learned Senior Advocate Shri Bhangde for the Applicants and learned Advocate Shri Hajare and Smt. Joshi for the contesting Respondents.
2. It is true both the Second Appeals Nos. 147 of 2021 and 148 of 2021 were decided by the common judgment dated 21.01.2022. There were several questions involved. The only ground on which present review applications are filed is “the observations in para no. 40 on one hand and direction no. (d) on the other hand” does not match with each other.
3. When this review applications are filed, it is submitted the Respondents to whom learned Advocates Mr. Hajare and Ms. Joshi represents have filed reply. When they were placed before the Court presided over by Justice A. L. Pansare (at Nagpur bench), vide order dated 02.09.2024, he gave the following directions:-

“Registry shall process these applications in terms of the judgment passed by the Hon’ble Supreme Court in the case of Malthesh Gudda Pooja Vs. State of Karnataka and Others [(2011) 15 SCC 330]”.

4. Accordingly, learned Registrar (Judicial) has prepared a submission, and it was put up before the Hon'ble Chief Justice and that is how both these applications are placed before me and I have heard both the sides through Video Conferencing.

5. When I have read observations in para no. 40 on one hand and direction no. (d) on the other hand, **it is clear that direction no. (d) is not in consonance with observation in para no. 40.**

6. Learned Advocate Shri Hajare and Ms. Joshi submitted that when this Court has given direction no. (d), the facts and circumstances were considered and referred in the judgment and according to them, there is no need to review direction no. (d).

Direction no. (d) reads thus :-

“(d) It is made clear that the report given by the Court Commissioner “that house is impartible” is not open for any more inquiry and it has become final.”

7. If this direction will continue it means the executing Court has to proceed further as per the mode available as per the law. However, when observations in para no. 40 are perused, I have elaborately dealt with the provisions of Order 26 Rule 14(2) of the Civil Procedure

Code and various options available before the executing Court while dealing with report of the Court Commissioner. At the same time, in para no. 41, I have given my findings in sub para no. (a) to (d). Sub para no. (a) reads thus:-

“passing the two orders without replies to the appellants does not amount to denial of hearing to these appellants due to their conduct”

8. It is true that the scope of review is regulated as per the provisions of Order 47 of the CPC. The scope is not wide as compared to appellate or revisional jurisdiction. While exercising review jurisdiction, this Court is not supposed to review all findings. The findings in para no. 41 (a) will remain as it is. So for limited aspect, I am accepting the request of the Applicants.

9. By this order, I am clarifying that direction no. (d) will not remain as it is but the Executing Court to hear the contesting parties and give findings on the report of the Court Commissioner and then to proceed further as per further directions. This has to be done on the basis of record available with the Court and liberty is not granted to file any pleadings and documents. In view of that following order is passed:-

ORDER

(a) Direction No. (d) is deleted and instead of that following order is passed:-

- (i) The Executing Court is directed to hear the present review applicants and all other Parties on the point of report given by the Court Commissioner “*that the house is impartible*”.
- (ii) The Executing Court is directed to give finding on that report by considering the provisions of the Order 26 Rule 14 of the Civil Procedure Code.
- (iii) The Executing Court is directed to do this exercise within four weeks from 10.03.2025.
- (iv) Both the Parties are directed to appear before the Executing Court on 10.03.2025.
- (v) Office to send the record on priority basis. Learned Registrar (Judicial-I) at Mumbai and at Nagpur bench to do the needful.
- (vi) Once this exercise is done, the Executing Court is directed to proceed further as per the directions given in the operative order.

10. Accordingly, review applications i.e. Miscellaneous Civil Applications are disposed of.

[S. M. MODAK, J.]