IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

932 CIVIL APPLICATION NO. 11658 OF 2026
IN FA/2260/2026

Pradeep s/o Sharadrao Patil and others
VERSUS
Jayshree w/o Balasaheb Misal and others
...
Advocate for Applicants : Shri. R. S. Deshmukh, senior advocate i/b Mr. Shriram V. Deshmukh
Advocate for Respondents : Mr. S. M. Nawale
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CORAM : **SANJAY A. DESHMUKH, J.**
DATED : **29th OCTOBER, 2026**

PER COURT :-

1. This is an application for recalling/modification/clarification of the order passed by this court on 18.07.2026 in first appeal No. 2260 of 2026.

2. Learned senior advocate for the applicants pointed out the order passed by this Court and submits that as per the proviso to Section 173 of the Motor Vehicles Act, 1988, an amount of Rs.25,000/- or 50% of the amount awarded, whichever is less, is to be deposited in the High Court. He submits that already an amount of Rs.25,000/- is deposited in this court. He pointed out the law laid in the cases of ***Anil Saraf vs. Namboodas, LAWS(MPH)-1996-4-36*** and ***Vyankat S. Venkata Subbaiah vs. Kodaali Chinnappa, AIR***

OnLIne 2001 AP 8 and submits that the amount of Rs.25,000/- as per the proviso to Section 173 of the M.V. Act, is deposited and there is compliance on the part of the applicants. Therefore, direction to pay 50% amount deserves to be modified and recalled in view of the law laid down in the cases of ***Anil Saraf vs. Namboodas and S. Venkata Subbaiah vs. Kodavali Chinnappa (supra)***.

3. Learned advocate for the respondents strongly opposed the application by filing affidavit in reply which is taken on record and marked "X-1". He submitted that once this court has passed the order and unless it's review is prayed, the same cannot be modified and thus the application is not maintainable. Learned advocate is relying upon the judgment in the case of ***Asit Kumar Kar vs. State of West Bengal and others, 2009 LJSoft (SC) 67***, in which it is held that there is a distinction between a review petition and the prayer for recalling of the order. In a review petition, the Court considers the matter on merits to determine whether there is an error apparent on the face of the record. However, in a recall petition, the Court does not examine the merits of the matter but simply recalls an order which was passed without following the principles of natural justice. He therefore, submitted that the application is not maintainable. Learned advocate for the respondents is also relying upon the judgment in the case of ***United India Insurance Company Ltd. vs. Mohd. Maqbool***

Reshi, 2000 AIHC 558, in which it is held that the High Court cannot entertain the appeal. He submitted that the proviso to Section 173 of M.V. Act clarifies by the words “or 50% of the awarded amount” and this Court has rightly directed to deposit the amount. Therefore, it is not necessary to interfere in the said order by correcting it.

4. On perusal of the impugned order as well as the section 173 of the M.V. Act and particularly the proviso, which states that the court may direct to deposit Rs.25,000/- or 50% of the amount so awarded whichever is less, in the manner as directed by the High Court. While passing the order, this court directed to deposit 50% of the amount awarded. However, the proviso whichever is less in the matter as directed by this Court was not followed by this court. Therefore, as per the law laid down in the case of ***Anil Saraf vs. Namboodas and S. Venkata Subbaiah vs. Kodavali Chinnappa (supra)*** the literal meaning of proviso “whichever is less” means Rs.25,000/- which is deposited.

5. Considering the aforesaid aspect, this Court is of the view that the error was committed by this Court itself and that such an error can be corrected by the Court at any time, even suo motu, without there being any formal application by either of the parties. As the well-known legal maxim goes, “To err is human; to forgive,

divine.” No party should be made to suffer on account of a mistake committed by the Court.

6. As far as mistakes that happen on the part of the Court are concerned, the Hon’ble Supreme Court in the case of ***D. Purushottam Reddy and another Vs. K. Sateesh, reported in 2008 SC 505,*** held that the party shall not suffer for the mistake of the Court. (actus curiae neminem gravabit – No person shall be prejudiced by an act of court). Further in the case of ***Odisha Forest Development Corporation Limited Vs. Anupam Traders and Anr. reported in (2020) 15 SCC 146,*** Hon’ble Supreme Court held that the Court will have to bear in mind the maxim actus curiae neminem gravabit, namely i.e. no party should suffer due to the act of court.

7. The Hon’ble Supreme Court in the case of ***K.P. Tiwari vs. State of Madhya Pradesh, AIR 1994 SC 1031,*** held that it is well said that a judge who has not committed an error is yet to be born. And that applies to judges at all levels from the lowest to the highest . Sometimes, the difference in views of the higher and the lower courts is purely a result of a difference in approach and perception. The Hon’ble Supreme Court also in the case of ***Braj Kishore Thakur vs. Union of India and others; AIR 1997 SC 1157***, has observed that it is well to remember the words of a jurist that “a Judge who has not

committed any error is yet to be born."

8. It is also notable that in the case of ***Brown V. Allen, Warden, 344 U.S. 443 (1953),*** in which the Honourable Supreme Court of United States of America, observed that, "We are not final because we are infallible, but we are infallible only because we are final.

9. In view of the reasons discussed hereinabove, this Court finds that the judgments relied upon by the learned advocate for the respondents are not applicable to the facts and circumstances of the present case. Therefore, this Court does not find it necessary to rely upon the same.

10. Considering all these aspects, this court is of the view that the error is to be corrected. Therefore, the application is partly allowed. The applicants have to deposit Rs.25,000/-, which is already deposited. With this clarification, the application is allowed and disposed of.

(SANJAY A. DESHMUKH, J.)

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