IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 4449 OF 2026

IN REVIEW APPLICATION (ST) NO. 33316 OF 2025

IN SECOND APPEAL NO. 645 OF 2023

Babasaheb S/o Nivruti Waibhat
Age : 63 Years, Occ. Agriculture
R/o.Pimparnai, Tq. & Dist. Beed. **Applicant**

(Original Plaintiff)

VERSUS

1. Dadasaheb S/o Dhondiba Waibhat
   Age : 65 Years,Occ. Agriculture

2. Sundar S/o Dhondiba Waibhat
   Age : 60 Years, Occ. Agriculture

3. Ganpat S/o Dhondiba Waibhat
   Age : 58 Years, Occ. Agriculture

4. Keshav S/o Nivrutti Waibhat
   Age : 51 Years,Occ. Agriculture

5. Namdev S/o Sakharam Waibhat
   Age : 65 Years, Occ. Agriculture

6. Ashok S/o Dadasaheb Waibhat
   Age : 40 Years, Occ. Agriculture,

7. Ramesh S/o Dadasaheb Waibhat
   Age : 33 Years, Occ. Agriculture

8. Ishwar S/o Namdev Waibhat
   Age : 33 Years, Occ. Agriculture

9. Abasaheb S/o Keshav Waibhat
   Age : 27 Years, Occ. Agriculture

All resident of Pimparnai
Taluka & Dist. Beed. **RESPONDENTS**

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Mr. Datta A, Madake for the applicant.

Mr. N. L. Jadhav for respondents.

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CORAM : SANDIPKUMAR C. MORE J.

RESERVED ON : 06.10.2026
PRONOUNCED ON : 07.10.2026

ORDER :

1. Heard rival submissions.

2. Though the present application is filed for condonation of delay of around 1 & half years in filing Review Application in respect of order dated 25.06.2024 in Second Appeal No. 645 of 2023, but under order dated 03.08.2026 in the instant application, I have decided that along with the delay condonation application, the merits of Review Application had also been lifted to.

3. As per the order dated 25.06.2024 in Second Appeal No.645 of 2023, this Court has admitted the appeal by framing the following substantial question of law :-

> "(A) Whether the learned First Appellate Court has erred in considering the entire evidence brought by the parties before the learned Trial Court in respect of ownership as well as location of the disputed Well "?

4. While admitting the Second Appeal, this Court had also passed an order of staying the operation and execution of the judgment and decree passed by the learned First Appellate

Court dated 28.11.2023 in Regular Civil Appeal No. 122 of 2022 during the pendency of Second Appeal.

5. The learned counsel for the applicant submits that, due to the stay under order dated 25th June 2024, the present applicant, who is the original plaintiff, is deprived of the fruits of decree. Despite there being a decree in his favour in the First Appeal, he is not able to get water to cultivate his land i.e. land admeasuring 16 R out of Gut No. 154.

6. As against this, the learned counsel for the respondents/defendants submits that this Court vide order dated 25.06.2024 has elaborately discussed all the aspects and also observed that the learned First Appellate Court did not consider the evidence of Surveyor about the location of Well and reversed the finding of the learned Trial Judge. According to him, the substantial question of law framed by this Court in the Second Appeal will take care of the issue in dispute between the parties. As such, he prayed for dismissal of the application along with the Review Application.

7. The record indicates that the applicant had filed suit for simplicitor injunction for restraining the defendants from obstructing his user of Well, which he had dug in his area of

Gut No. 154. It is further evident that though the learned Trial Judge has dismissed the said suit on the ground that the plaintiff could not prove the ownership of the land where the Well is situated, but the learned First Appellate Court allowed the appeal and granted injunction in favour of the applicant/plaintiff. Admittedly, the concerned Sub Divisional Officer has dismissed the appeal of the respondents challenging the Mutation Entry No. 482, by which the Well in dispute was recorded in the name of applicant/plaintiff. However, on dismissal of the suit, again the said Well was entered into the name of defendants and that too in the record of rights of adjacent land of the defendants i.e. Gut No. 155.

8. It is extremely important to note that while admitting the Second Appeal, this Court has framed the substantial question of law as mentioned above, wherein ownership as well as location of the disputed well needs to be considered for adjudicating the matter on merits. There is evidence of Surveyor, who had opined that major portion of disputed Well was found in the land of respondents/defendants i.e. in Gut No. 155, and therefore, when the location is in dispute, the same can be decided in the Second Appeal itself. Therefore,

when the order under review is passed on merits of the case, it has to be dealt in the Second Appeal itself and the review of the same would not come under the scope of review petition, since there is no apparent illegality in the same.

9. Considering all these aspects, I am of the opinion that the prayer of reviewing of the aforesaid order does not fit in the scope of review, and therefore, there is no necessity to condone the delay also. Accordingly, the Delay Application along with the Review Application stand dismissed.

(SANDIPKUMAR C. MORE)
JUDGE

Y.S.K.