

MHBU070006642016



**Order Below Application (Exh. 108).**

(Passed on 05.04.2023)

1. Perused the application and Say (Exh. 109).
2. Here, the defendant is praying for review of the order passed by this Court below application (Exh.104). In the application, the defendant has narrated that his application for treating the Issue no. 1-A as preliminary issue was rejected by this Court and since said Issue was relating to maintainability of this suit, it was necessary for the Court to allow the application. Further, the defendant has also claimed that in the case reported in AIR 2021(SC) 2710, Hon'ble Apex Court was pleased to observe that when the Issue is regarding maintainability of this suit, the trial Court can decide the same as preliminary Issue. With such submission, the defendant has prayed for review of the order passed by this Court below application (Exh.104).
3. The application is opposed by the plaintiff by filing its say vide Exh. 109. In the Say, the plaintiff has submitted that the defendant has moved this application on baseless grounds and the order in question passed by this Court is proper. The plaintiff has further pointed out that while passing the order in question this Court has observed that the Issue no. 1-A almost covers entire scope of the suit and therefore, treating the Issue as preliminary Issue would be meaningless. The plaintiff has further claimed that this Court has committed no error while passing the order in question and therefore, there is no need to review the same. With such submission, it was prayed to reject the application.

4. Heard both sides.

5. Perused record. Record shows that this Court has rejected the application (Exh. 104) moved by the defendant for treating the Issue no. 1-A as preliminary Issue. Being aggrieved by it, the defendant has moved this application and he is praying for review of said order. However, on perusal of the application, it can be seen that the defendant has not narrated any specific ground for which the order in question needs to be reviewed. The application is silent on those grounds and it is simply stated that since Hon'ble Apex Court, in the case reported in AIR 2021 (SC) 2710, was pleased to review the order which relates to Issue of maintainability of the suit, the order in question also can be reviewed. However, such claim of defendant do not seems to be relevant. Since, the defendant is relying upon aforesaid case law, it was expected from him to satisfy the Court that the facts of the case law resembles with the facts of the suit. The defendant cannot claim that since Hon'ble Apex Court has allowed the review for the issue of maintainability of the suit, his application needs be allowed for same reason.

6. Further, while passing the order below application (Exh. 104) This Court has already observed that the evidence required on Issue no. 1-A almost covers entire scope of the suit and for that reason treating the Issue no. 1-A as preliminary Issue would be meaningless. Further, it was also observed by this Court that it would be better to record entire evidence at once to decide all the issues by this Court rather than to record it in parts for decision of the preliminary Issue. On perusal of the application, it can be seen that the defendant has not pointed out as to how above observation of this Court is erroneous, though it was necessary

for him. Further, the defendant has also relied upon *Dinkar Kisanrao Warade -Vs- Gajanan Prasad Sahakari Gruh Taran Sanstha and others reported in 2014(4) Mh.L.J.* and *S. Madhusudhan Reddy -vs- Narayana Reddy and others reported in 2022 CJ (SC) 635*. However, with due respect and for above reasons, the case laws cannot be said to be applicable to present suit. Considering above facts, it can be said that the application is devoid on merit and it deserves to be rejected. I do not find any reason to review the order in question passed by this Court. Therefore, I am passing following order.

**Order**

Application (Exh. 108) is hereby rejected.

Place : Shegaon.  
Date : 05.04.2023.

Sd/-  
(J.R Ghadge)  
Civil Judge Junior Division  
Shegaon, Dist. Buldana.

I, *K.S. Deshmukh*, Stenographer of C.J.J.D. & J.M.F.C. Court No.1, Shegaon affirm that the contents of this P.D.F. file order is correct word to word as per the Original Order.