

MHKO130003732003



Order Below Exh.153 in R.C.S. No.158/2003.

01. This application is filed under section 114 and 151 of the Code of Civil Procedure by applicant/ original defendant No. 5 Maruti Shamrao Malugade for review the order passed below Exh. 138.

02. It is submitted by the applicant that the applicant/ original defendant No. 5 against whom, the plaintiffs have filed application Exh. 95 and withdraw the claim. The Court passed order thereon and permitted them. Thereafter, the applicant/original defendant No. 5 filed application vide Exh. 138 under Order 23 Rule 1-A of C.P.C. and prayed for transposition him as plaintiff. The plaintiff resisted this application. He further submitted that the Hon'ble Court passed order dated 04/01/2019 and rejected said application of present applicant on the ground stated therein. However, said order needs to be reviewed because the order is not maintainable in the eyes of law, it is wrong. The Hon'ble Court has not applied mind to the fact of case as well as the legal provisions. The Hon'ble Court erred in a holding that there are no argument on behalf of present applicant. The Hon'ble Court erred in holding that there is no need to transpose him as a plaintiff, the Court failed to take note of argument submitted on

27/04/2018 and therefore, came on wrong conclusion. The Court failed to take notes of citation relied upon by applicant. Therefore, he prayed for review of the order passed below Exh . 138.

03. Plaintiff filed his say and submitted that the application is not maintainable in view of the provisions of Civil Procedure Code. The order passed below ex. 138 is proper. There is no need to review the order. The scope of review the order is limited. The application is not in proper form. So, he prayed for rejection of present application.

04. Perused the application and say filed thereon. I have also gone through the order passed by my learned predecessor below Exh. 138 and written notes of argument submitted by applicant vide Exh. 149. Heard Ld. Advocate for both sides. Studied section 114, 151 and Order 42 of the Code of Civil Procedure. As per Order 42 Rule 1 of C.P.C. *Any person considering himself aggrieved -*

(a) *by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*

(b) *by a decree or order from which no appeal is allowed, or*

(c) *by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any*

other sufficient reason, de sires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

5. It is reflected from the order passed below Exh. 138 that my learned predecessor has not considered the written notes of argument filed by applicant vide Exh. 149 and citation coated therein. The said argument needs to be considered before passing order below Exh. 138. This is error on the face of record, therefore, on the sole count, it is necessary to review the previous order and also needs to be passed fresh order by considering submission of both parties. This application is not in format of appeal. As per Order 42 Rule 3 of CPC, this specific format is provided for filing review application but it is directorily. Further, the procedure law is hand made of justice, so it will not proper to reject this application on the count that it is not filed in the specified form. Therefore, in view of aforesaid observations, the application deserves to be allowed. Hence, following order is passed.

ORDER

- 1 Review application is allowed.
2. Both parties are directed to appear on next date for hearing on Exh. 138 without fail, otherwise Court will proceed to application Exh. 138 on merit.

Date-01/08/2019.
Place-Kagal

(V. H. Khedkar)
Jt. Civil Judge Jr.Dn., Kagal