

Common Order below Exh. 42 and 44 in R.C.S.No.108/2024**Pratik Dudhane Vs. Genaba Dudhane & Ors.****(Passed on 02/04/2025)**

1) The defendant No. 7 to 9 have filed present applications at Exh. 42 u/s 151 of Civil Procedure Code for abeyance and application at Exh. 44 u/s 114 of Civil Procedure Code for review of of in Status-quo order (Exh.30) passed on 17/01/2025.

2) The case of the applicant, in short, is that he filed the above stated suit for partition, declaration and perpetual injunction in respect of suit properties. The suit properties are ancestral properties of plaintiff and defendants Nos. 1 to 6. The defendants Nos. 7 to 9 are co-operative society, recovery officer and liquidator respectively. Defendant No. 1 is the Plaintiff's grandfather, Defendant No. 2 is the Plaintiff's paternal granduncle, Defendant No. 3 is the Plaintiff's father, Defendants No. 4 and 5 are the Plaintiff's paternal uncles, and Defendant No. 6 is the Plaintiff's real sister. The suit properties described in paragraph 1 of the plaint are ancestral properties owned by the Plaintiff and Defendants No. 1 to 6 as members of a joint Hindu family. No partition of these properties has been carried out in an amicable or legal manner. Therefore, the Plaintiff holds an undivided share in the suit properties, although said properties are in the names of Defendants No. 1 to 5. Certain portions of the suit properties were mortgaged by Defendants No. 1 to 5 in favor of Defendants No. 7 and 8 in exchange for a loan amount. The Plaintiff had no involvement in this transaction, and no consent was obtained from the Plaintiff regarding the mortgage.

Furthermore, the said loan was not taken for the benefit of the joint family or for any legal necessity but was instead availed for the personal benefit of Defendants No. 1 to 5. Plaintiff further stated that, defendants No. 7, 8, and 9 may take possession of the suit properties and proceed with their auction sale to recover the loan. If such actions are taken, the Plaintiff will be deprived of his lawful share in the properties, causing irreparable loss. On 15/07/2024, the Plaintiff demanded partition of the suit properties from Defendants No. 1 to 5, and a meeting regarding the same was held at the residence of Defendant No. 1 in Mouje Nand. However, the Defendants refused to partition the properties. Instead, Defendant No. 9 sought possession of the suit properties from Defendant No. 3 and even issued a legal notice through the concerned Tahsildar. The Plaintiff became aware of this notice during the meeting. The Plaintiff asserts that until the properties are properly partitioned and the Plaintiff's share is separated, Defendant No. 9 cannot take possession, seize, or auction the suit properties. Therefore, the present suit has been filed.

3] During the proceeding of the suit on 03/08/2024, plaintiff had filed an application below Exh. 30 and prayed to pass status-quo order against defendants. After perusal the record and heard the arguments of both side at length, court had passed an order below Exh. 30 by allowing the application and status-quo was given against the defendants till disposal of Exh. 5 i.e. interim injunction.

4] The defendant No. 7 to 9 have submitted that, the Court

erroneously relied on the notice dated 03.07.2024, despite the period mentioned in the notice having already elapsed, rendering the application in fructuous. It is further submitted that, they have cited multiple case laws from the Bombay High Court, which were not referred while passing the said order. The order passed below Exhibit 30 is vague, ambiguous, and lacks reasoning, constituting an error apparent on the face of the record. Additionally, the order is cryptic and incomplete, as it fails to provide any findings or apply the principles of law while deciding the temporary injunction application, thereby making the order non est in the eyes of the law. They further prayed that, review the order passed below Exh. 30 and until then the order passed below Exh. 30 be kept in abeyance or stayed till the decision of application below Exh. 44.

5] The plaintiff have objected the application and submitted that the defendants Nos. 7 to 9 are not part of the Defendant's family, and therefore, the relief sought against them is limited to an injunction. The orders dated 17/01/2025 (Exhibit 30 and Exhibit 32) must be read together for proper understanding. The cause of action arose on 15/07/2024, when the Plaintiff demanded partition from Defendants No. 1 to 6 and became aware of the notice issued by Defendants No. 7 to 9. Since partition has not yet been effected, the cause of action remains ongoing. If Defendants No. 7 to 9 proceed with the auction of the suit properties before partition, the Plaintiff's legal rights will be affected. Thus, after the rejection of the application under Order 7 Rule 11(d) of the CPC, the status quo order was necessary to maintain the existing state of the suit properties. The Award obtained by Defendants No. 7 and 8 on

21/01/2008 under Section 108 of the Maharashtra Co-operative Societies Act is time-barred under Article 136 of the Limitation Act, rendering its execution unenforceable. Moreover, Section 151 of the CPC cannot be invoked to stay the injunction or status quo order, as there is an appellate remedy available. Hence, plaintiff prayed to reject both applications.

6] The points for determination alongwith my findings there on are as under.

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether there is error apparent on the face of record in the impugned order passed below Exh. 30?	No.
2	Whether for any other reason the impugned order needs review?	Taking disadvantage of order.
3	What order?	As per final order.

REASONS

7] I had an opportunity to hear both sides at length besides, I have been benefited by the written notes of arguments filed by the Learned Advocate for the non-applicants vide Exh. 46.

8] The defendants No. 7 to 9 have relied upon following case laws in support of their contentions -

i) The judgment passed by Hon'ble Supreme Court of India in **Sree**

Anandhakurmar Mills Ltd. Vs. Indian Overseas Bank [Air Online 2018 SC 498].

ii) The judgment passed by Hon'ble Supreme Court of India in ***Siddamsetty Infra Projects Pvt. Ltd. v. Katta Sujatha Reddy*** [Air Online 2024 SC 742].

iii) The judgment passed by Hon'ble Supreme Court of India in ***Pooja Mittal & Ors. vs. Rakesh Kumar & Ors. CIVIL APPEAL NO. 2737 OF 2020*** (Arising out of SLP(C) No. 5258 of 2020).

iv) The judgment passed by Hon'ble Bombay High Court in ***Dilip Voicunto Sinai Bobo v. Voicunto Xabuli Sinai Bobo and Others***, [2021(4) ALL MR 537].

v) The judgment passed by Hon'ble Bombay High Court in ***Dr. Annasaheb Chougule Urban Co-Operative Bank Ltd., Kolhapur VS. Suhas Balkrushna Shete and Others***, [2014 (3) MHLJ 859].

vi) The judgment passed by Hon'ble Bombay High Court in ***Tirupati Ginning And Pressing Factory, Akola VS. M/s Balaji Ginning And Pressing Industry, Akola and others***, [2008 (5) MHLJ 393].

vii) The judgment passed by Hon'ble Bombay High Court in ***Devgiri Nagari Sahakari Bank Ltd., Aurangabad and others VS. Zubidabegum w/o Asadulla Khan and others***, [2012 (6) MHLJ 457].

viii) The judgment passed by Hon'ble Bombay High Court in ***Pukhraj s/o Mohanlal Vyas and others VS. Sanmitra Nagri Sahakari Pata Sanstha Ltd., and others***, [007 (3) MHLJ 575].

AS TO POINTS NOS. 1 AND 2 -

9] I have carefully gone through the cited cases with reference to the scope of powers of this court to review order under section 114 of C.P.C. I considered submissions of both parties along with record.

10] Now, if the applicant is aggrieved by the order on the ground that instead of taking one view, the court has taken another, he is at liberty to raise such contention by filing appeal. This court can not sit as an appellate court to review its own orders just because the party has been aggrieved by the order as he could not get the desired result.

11] Though also it is settled position that a review of an order may be based on any of the following reasons.

- A) Discovery of new and important matter or evidence.
- B) Mistake or error apparent on the face of record.
- C) Any other sufficient reason.

12] If any above conditions is satisfied, Court should exercise power of review. It is submitted on behalf of defendants that, plaintiff has not paid any single penny towards the loan and now plaintiff has tried to take disadvantage of this status-quo order by applying the applications. It is submitted on behalf of plaintiff that, after 16 years, defendants are come for recovery of the loan and there is no any explanations about the delay. Plaintiff has share in the property. So they come with this suit.

13] It is seen on record that plaintiff has given the application with reference of this status-quo order which is not legal. Both the parties have kept in mind that, status-quo order is to keep the situation as it is. But if any party tried to take disadvantage of this status-quo order should be vacated. Record reveals tha on considering submissions of both parties, and documents on record, status-quo is granted, so their in my view there is no any error apperrent on the face of record. But any other sufficient reasons, court should exercise the power of review . Moreover the power of review is inherited in every court to prevent mis carriage of justice. Considering all these things, applications deserves to be allowed. Hence, following order -

ORDER

- 1) The status-quo order passed below Exh. 30 on 17-01-2025 is hereby vacated.
- 2) The both parties shall argue on the Exh. 5 on next date without fail.

Pune.
Date : 02-04-2025

[Smt.Meena W. Jadhav]
Jt. Civil Judge, Jr.Div., Bhore

CERTIFICATE

I affirms that the contents of this P. D. F. file order are same word for word as per original order.

Name of the Court	:- Hon'ble Smt. Meena W. Jadhav C.J.J.D. & J.M.F.C., Bhore, Pune
Name of the Steno	:- M. S. Kondhare L.G.
Date of Order	:- 02-04-2025
Signed by P.O.	:- 02-04-2025
Order uploaded on	:- 02-04-2025