

**(2013) 01 BOM CK 0254**

**In the Bombay High Court**

**Case No :** Review Application No. 321 of 2012 in Letters Patent Appeal No. 146 of 2012 in Writ Petition No. 4914 of 2012

Vitthal Janardan Phadke

APPELLANT

Vs

Prabhakar Mohiniraj Wable

RESPONDENT

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**Date of Decision :** 29-01-2013

**Acts Referred:**

**Citation :** (2013) MCR 743

**Hon'ble Judges :** A.H. Joshi and Sunil P. Deshmukh, JJ.

**Bench :** Division Bench

**Advocate :** Shri R.R. Mantri, Advocate, for the Applicant; Shri V.D. Hon, Advocate, for the Respondent No. 1; Shri N.B. Patil, AGP, for the Respondent Nos. 2, 3 and 4

**Final Decision :** Dismissed

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**Judgement**

1. Heard learned Advocates for the applicant and the respondent no.1 as also learned AGP for the respondent nos.2 to 4.
2. Rule. Rule is made returnable forthwith and heard finally by consent of learned Advocates for the parties.
3. This is an application for review of the judgment and order dated 23.10.2012 in Letters Patent Appeal No. 146/2012 in Writ Petition No.4914/2012 passed by Division Bench consisting of Hon''ble S/Shri Justices Naresh H. Patil and A.B. Chaudhari.
4. At present, Hon''ble Shri Justice Naresh H. Patil is not sitting at Aurangabad. The matter could have waited till arrival of Justice Patil, however, the relief - subject matter of Letters Patent Appeal and the civil application for review has a life only up to 31.3.2013. In that background, learned Advocate for the applicant urged for taking up the civil application for review by this Court, which even otherwise could have been taken in view of present standing orders.

The matter is, therefore, taken up for hearing.

5. By this application for review, the applicant seeks review of the judgment and order dated 23.10.2012 in Letters Patent Appeal No.146/2012 and wants an order in terms of operative order passed in the Letters Patent Appeal No.51/2002 with a rider that he be permitted to operate the license till the civil litigation between the parties comes to an end. The submission of the applicant quoted in foregoing sub-para is noted on the basis of oral submissions advanced.

6. Learned Advocate Shri R.R. Mantri for the applicant states that the grounds of review formulated and presented in the memo of application do not eloquently and aptly represent the ground of review to be argued. He, therefore, submits that the ground of review being argued is:-

The Division Bench deciding the Letters Patent Appeal erred in failing to give due and deserved weightage to the reasons and operative order passed by this Court while deciding the Letters Patent Appeal No.51/2002 between same parties, which constitutes an error apparent on the face and hence review of judgment delivered in LPA 146/2012 is warranted.

7. On hearing the respective submissions and perusal of record, what is obvious in terms of admitted facts and disputed questions is summarized as follows:-

[a] Prabhakar Wable was the original license holder.

[b] During currency of license, partnership came into existence.

[c] Present applicant is the partner.

[d] The partnership has ceased to exist due to dissolution.

[e] There is written partnership deed.

[f] The matter of dissolution and other disputes went before the arbitrators. Arbitration award is passed.

[g] The award was challenged before the District Court.

[h] As per the judgment of the District Court, the award of majority of arbitrators was upheld limited to the point of declaration that the partnership firm stood dissolved and rest of the award was set aside.

[i] The partnership deed contains clauses, which read as follows:-

"13. The partnership shall be governed by all provisions of the Indian Partnership Act, save and as otherwise provided that the firm shall not be dissolved by reasons of retirement, expulsion, disability, insolvency or death of partners and on happening of any such even the remaining partners may continue the same with or without admitting the legal heirs of such partner. Even if partner no.1 desires to retire from the firm the business shall be continued by the remaining partners.

14. The retiring partner shall not be entitled to any goodwill or to pay other rights of firm. The retiring partner shall only be entitled to the amount standing to their account on the making of the accounts."

[j] Based on the clauses (13) & (14) quoted in foregoing point, the applicant claims that he has right to continue the license for business even after dissolution of firm. Applicant's claim is strongly disputed, denied and is contested by the original licensee Shri Prabhakar Wable.

8. After hearing the parties, what emerges can be summarized as follows:-

[a] Letters Patent Appeal No.51/2002 had arisen in the background that the license was suspended by the Collector and the dispute as to dissolution of the firm was yet not adjudicated or had not yet reached finality.

[b] In the Writ Petition No.4308/2001, challenge before the learned Single Judge was to the order passed by Hon''ble Minister on 30.6.2001. By said order passed by the Hon''ble Minister, present applicant was allowed to operate.

[c] The Writ Petition No.4308/2001 was allowed and the Minister's order was set aside thereby suspension ordered by the Collector and confirmed by the Commissioner remained in the field.

[d] Due to order passed in the Letters Patent Appeal No.51/2002 as modified in Review Application No.8367/2003, present applicant - Mr.Vitthal Phadke was permitted to operate the license "till the dispute regarding partnership is decided by the Court". This review order is dated 7.4.2003.

9. Much water has flown down the bridge between 2003 till October 2012 when the judgment in Letters Patent Appeal is rendered.

10. Not only that, but arbitration award of majority which holds that the dissolution has occurred is confirmed to that extent. This matter of fact situation is undisputed and indisputable.

11. Now the only question to be decided in the review is as to whether the fact finding done by the Division Bench of this Court contained in paragraph 24 leading to the fact finding done at page no.34, namely :-

"We, therefore, hold that the respondent no. 1 - Prabhakar Wable alone is entitled to claim renewal of license from the authorities independent of the partnership firm, if same is otherwise permissible in accordance with the law."

(quoted from paragraph no.24 of the judgment in LPA 146/2012 - page no.34 of the CA 321/12 paper book)

12. The judgment in Letters Patent Appeal No.51/2002 is not a fact finding judgment. It cannot operate either as a res judicata or otherwise having a binding force on the parties or on the Court in future lis.

13. After considering the facts and various orders passed by various Courts, we

hold as follows:-

The interlocutory arrangement ordered by the Division Bench as modified in the Review Application No.8367/2003 in Letters Patent Appeal No.51/2002 and maintained in the Hon"ble Supreme Court, would govern the arrangement only until the question as to existence of partnership was to be ruled by Courts and not any further.

14. In the result, the argument that the judgment suffers from error apparent on the face of record only represents a grievance against the order than a ground in existence, made out and shown.

15. One does not know whether it could be a ground of appeal, however, it is sure that it can never be a ground of review.

16. Therefore, the application for review is dismissed with costs.