

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1506 OF 2014

Smt. Tulasabai B. Patil .. Petitioner
vs.
Shri. Dhondiram B. Patil and ors. .. Respondents

Mr. Sudhir V. Sadavarte for the Petitioner.
Mr. Amit Borkar for Respondent Nos.1 and 2.

CORAM : M. S. SONAK, J.
DATE : 5 May, 2015.

P.C. :-

1] This petition is directed against the order dated 25 November 2013 made by the Ad-hoc District Judge-1, Kolhapur rejecting the petitioner's application at Exhibit-25 seeking direction to refer the issue regarding bar under Consolidation Act to the competent authority.

2] There is no reason to interfere with the impugned order, as there was no real justification on the part of the petitioner to require reference of the issue to competent authority, at the stage when the matter was pending in an appeal since the year 2007. As a result of the application, at Exhibit 25, it is the petitioner, who has invited certain observations, which could have best been avoided by merely proceeding with the hearing of the appeal on all grounds urged in the memo of appeal.

3] The petitioner does not appear to have raised specific grounds in the memo of appeal based upon Sections 36-A and 36-B of the Consolidation Act. However, it is submitted that such objection was

raised in the written statement. In the interest of justice and subject to payment of costs, the petitioner is granted liberty to amend the memo of appeal by raising such grounds. Amendment to be carried out, within a period of four weeks from today, simultaneously with payments/deposits of costs.

4] The appeal, as noted earlier, is of the year 2007. Accordingly, ends of justice would be met, if the learned Ad-hoc District Judge-1 Kolhapur is directed to proceed with the hearing of the appeal and to dispose of the same as expeditiously as possible and in any case within a period of six months from today. Although, the impugned order is not being interfered with, it is made clear that the petitioner shall be entitled to raise all the grounds as taken up in the memo of appeal, including the ground with regard to bar under Section 36-A and 36-B of the Consolidation Act. Such issues to be decided by the Appeal Court, in accordance with law and on its own merits uninfluenced by any observations contained in the impugned order dated 25 November 2013.

5] Further, considering that the petitioner has protracted the proceedings in the appeal, it is appropriate that the petitioner to pay costs of Rs.10,000/- (Rs. Ten Thousand only) to the respondents. Such costs may be either paid directly to the respondents or deposited in the Appeal Court, within a period of six weeks from today. Once such costs is deposited, the respondents shall be at liberty to withdraw the same unconditionally.

6] It is made clear that this Court has not gone into the question of whether or not the provisions under Section 36-A and 36-B of the

Consolidation Act are at all attracted to the facts and circumstances of the present case. Accordingly, the said question is kept open for determining by the Appeal Court, in accordance with law and on its own merits.

7] This petition is disposed of in the aforesaid terms.

8] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)

dinesh