

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9503 OF 2014

Ganpati Govinda Manjare (decd) through heirs
Hirabai G. Manjare and ors. ... Petitioners
Vs.
Ajit Surendra Maraje and another ... Respondents

Mr. Vijay Killedar for Petitioners.
Mr. Prajakt M. Arjunwadkar for Respondents.

CORAM : R. G. KETKAR, J.
DATE : 17TH JUNE, 2015

P.C. :

Heard Mr. Killedar, learned Counsel for petitioners and
Mr. Arjunwadkar, learned Counsel for respondents at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 18.07.2014 below exhibit-24 in Regular Civil Appeal No.62 of 2010 as also the order dated 18.07.2014 passed by the learned District Judge-1, Jaysingpur. By order dated 18.07.2014 below exhibit-24, the learned District Judge rejected the application made by the petitioners for adjournment. On the same day, the learned District Judge dismissed the appeal for want of non-compliance of order below exhibit-24. While dismissing the application exhibit-24, the learned District Judge directed the petitioner's Advocate to argue the matter. It appears that the petitioner's Advocate did not proceed with the arguments, and therefore, the learned District Judge dismissed the appeal for want of non-compliance.

3. In support of this Petition, Mr. Killedar submitted that the petitioners filed application at exhibit-23 under Section 36-B of the

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short 'Act') for referring the Suit to the Settlement Commissioner. The said application was rejected by the learned District Judge on 17.07.2014. On the same day, petitioners filed application at exhibit-24 seeking adjournment on the ground that they desire to challenge order below exhibit-23. The learned District Judge instead of adjourning the matter, rejected the application for adjournment and thereafter proceeded to dismiss the appeal for want of prosecution. Mr. Killedar, upon taking telephonic instructions from petitioners, states that petitioners though have filed application at exhibit-24 on the ground that they desire to challenge order below exhibit-23, they now don't desire to challenge that order. Statement made by Mr. Killedar, on instructions, is recorded.

4. Mr. Killedar submitted that the impugned orders may be set aside so that the Appeal can be heard on merits. He further submitted that all the contentions raised in the Appeal may be kept open and that he assures that petitioners will not seek any undue adjournment before the District Court.

5. On the other hand, Mr. Arjunwadkar strenuously opposed the Petition. He submitted that the learned trial Judge had framed issue No.4 as to whether the Civil Court's jurisdiction is barred to try and decide the Suit in view of Section 36A of the Act. The learned trial Judge observed in paragraph 25 that plaintiffs have sought recovery of possession of the suit property on the basis of their title. They have made reference to consolidation scheme only for showing how they have acquired title over the suit property. That does not mean that plaintiffs desire to get any question settled under the Act. It was further observed that no relief provided under the Act has been sought in the Suit. It is,

therefore, not barred under the provisions of the Act.

6. Mr. Arjunwadkar further submitted that application at exhibit-23 was made by the petitioners under Section 36-B of the Act solely with a view to delaying hearing of the appeal. In fact, application at exhibit-23 ought to have been made at the first available opportunity in the trial Court. He, therefore, submitted that in case the Court is inclined to restore the Appeal, costs may be imposed on the petitioner.

7. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the Suit instituted by the plaintiffs is decreed. Against that decision, petitioners preferred substantive first appeal. Petitioners have filed application at exhibit-23 under Section 36-B of the Act. Section 36-B of the Act reads as under:

“36B. Suits involving issues required to be decided under this Act . –

(1) If any suit instituted in any Civil Court or Mamlatdar’s Court involves any issues which are required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issues under this Act (hereinafter referred to as the 'competent authority') the Civil Court or Mamlatdar's Court shall stay the suit and refer such issues to such competent authority for determination.

(2) On receipt of such reference from the Civil Court or Mamlatdar’s Court, the competent authority shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate its decision to the Civil Court or Mamlatdar’s Court and such Court shall thereupon dispose of the suit in accordance with the procedure applicable thereto.”

8. Perusal of Section 36-B shows that if in any Suit instituted in any Civil Court or Mamlatdar's Court involves issue that is required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issue under the Act, the Civil Court or Mamlatdar's Court shall stay the Suit and refer such issue to such competent authority

for determination. In my opinion, the petitioners ought to have made that application at the first available opportunity in the trial Court itself, if they were of the opinion that the issue raised in the Suit was required to be settled by the authorities under the Act. Admittedly, no such application was made by the petitioners during the pendency of the Suit. The learned District Judge, while rejecting that application on 17.07.2014, observed that the application was made only to prolong the matter. I do not find that the learned District Judge committed any error in observing in that regard. In my opinion, application, itself, was wholly misconceived and was made with a view to delaying hearing of the appeal. At the same time, in my opinion, the learned District Judge was not justified in dismissing the application for adjournment as the petitioners intended to challenge order below exhibit-23. In my opinion, instead of dismissing the application for adjournment, the learned District Judge could have imposed costs for adjournment. In view thereof, the learned District Judge was also not justified in dismissing the appeal for want of compliance of order below exhibit-24.

9. In the result, Petition succeeds. The impugned orders are, therefore, liable to be set aside and appeal deserves to be restored subject to payment of costs of Rs.5,000/- to respondents within 2 weeks from today, failing which order dated 17.07.2014 dismissing the Appeal for want of prosecution shall automatically stand revived without any further reference to this Court. Costs shall be paid or deposited in the District Court by the petitioners under due intimation to the Advocate of the respondents. Subject to payment or deposit of Rs.5,000/-, prayer clause (b) is granted. All the contentions raised in the appeal are expressly kept open. It is needless to observe that the learned District Judge shall decide the Appeal on its own merits, without being influenced by the observations made in this order.

(R. G. KETKAR, J.)