

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

APPEAL FROM ORDER (ST) NO. 3726 OF 2015

Yadav Consultancy Service Pvt. Ltd. & Anr.	... Appellant
V/s.	
M/s. J.D. Gandhi Constructions	... Respondent

Mr. Prakash Yadav appellant no.2 party in person.
Mr. S.V. Dadavarte for the respondent.

**CORAM : K. K. TATED, J.
DATED : 31/03/2015.**

PC.:

. Heard Mr. Prakash Yadav, appellant no.2 party in person and learned Counsel Mr. Sadavarte for the respondent.

2 This Appeal from Order is preferred by defendants challenging the order dated 24.09.2014 passed by the 2nd Joint Civil Judge, Senior Division, Pune below Exh.14 in Special Darkhast No. 68 of 2014 in Special Summary Suit No. 18/2009, rejecting the same.

3 The appellants defendants filed application below Exh.14 for declaration that the respondent/plaintiff/decreed holder has suppressed the material fact from the Court while obtaining the decree. Hence, the decree is vitiated by suppression of the material facts in the eyes of law and it is not enforceable against applicant/ judgment debtors/ defendants. The applicant in application below Exh.14 dated 01.07.2014 stated that the respondent did not bring on record the approval of plan, commencement certificate issued by the Pune

Municipal Corporation, Pune because construction was to be carried after the approval of plan, commencement certificate etc. It is stated in the said application that for want of relevant documents on record, the decree obtained by the respondent plaintiff vitiate in the law. In support of his contention, the appellant no.2 party in person relies on the judgment of the Apex Court in the matter of ***S. P. Chengalvaraya Naidu (dead) by L.Rs v/s. Jagannath (ded) by L.Rs & Ors. reported in AIR 1994 SUPREME COURT 853*** and Judgment in the matter of ***Ganapatbhai Mahijibhai Solanki V/s. State of Gujarat reported in AIR 2009 SC (SUPP) 986***. The appellant no.2 party in person submits that there is no provision in law for preferring application for setting aside the decree, if it is obtained by fraud. Hence, Appeal from Order preferred by him is tenable and that to be heard on its own merits.

4 On the other hand, the learned counsel Mr. Sadavarte appearing on behalf of respondent plaintiff vehemently opposed the present Appeal from Order. He submits that the Appeal from Order itself is not maintainable in law. He submits that bare reading of application dated 01.07.2014 below Exh.14 filed by the appellants, shows that same is under Order 47 Rule 1 of the Code of Civil Procedure, 1908. He submits that the appellants themselves state that the application filed by them below Exh.14 for review of the decree dated 20.02.2014 in Special Summary Suit No. 18 of 2009. He submits that if the application for review of the order is rejected, the Appeal from Order is not maintainable. In support of this contention, the learned counsel for the respondent relies on Order 47 Rule 1,4 and 7 and Order 43 Rule 1(w). He submits that if the Appeal from Order itself is not maintainable, there is no question of going into merits of the matter

and same requires to be rejected.

5 I heard both the sides at length. Bare reading of the application below Exh. 14 dated 01.07.2014 shows that the applicant has filed application for review of the order dated 20.02.2014 on the ground that respondent plaintiff failed to place on record the relevant documents as stated in that application in paragraph 1. If review application is rejected, Appeal from Order is not maintainable in view of Order 43 Rule 1(w) of Code of Civil Procedure, 1908, which reads thus:

“Order 43 Rule 1(w): an order under rule 4 of Order XLVII granting an application for review.”

6 The authorities cited by the appellants in the matter of **S. P. Chengalvaraya Naidu** (Supra) and **Ganapatbhai Mahijibhai Solanki** (Supra) are not applicable in the facts of the present matter for deciding whether the Appeal from Order is maintainable or not if review application is rejected.

7 Considering these facts, I am of the view that the Appeal from Order is not maintainable against the impugned order dated 24.09.2014 passed by the 2nd Joint, Civil Judge, Senior Division, Pune below Exh.14 in Special Darkhast No. 68 of 2014, rejecting the same.

8 Hence, Appeal from Order stands rejected.

(K.K.TATED, J.)