

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 273 OF 2013
WITH
CIVIL APPLICATION NO.764 OF 2013 IN SA/273/2013**

1.Krishnanath Purushottam ..Appellants
Naringrekar and Ors

Vs

1. Jagdeep Jagannath Talekar
and Anr. .. Respondents

Mr.B.K.Raje, Advocate for Appellants.

Mr. Sushant Karandikar and Nidhi G. Dotiya, Advocate for
Respondent no.1.

Mr. Ashok B. Tajane, Advocate for respondent no.2.

CORAM : R.G.KETKAR,J.
DATE : 31/03/2015

PC:

1. Heard Mr. B. K. Raje, learned counsel for the appellants, Mr. Sushant Karandikar, learned counsel for respondent no.1 and Mr. Ashok B. Tajane, learned counsel for respondent no.2.
2. By this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, "C.P.C."), the Legal Representatives of the Judgment Debtor have challenged the Judgment and order dated 10.4.2013 passed by the learned District Judge-1, Sindhudurg at Oros in Civil Misc. Appeal No.58 of 2010. By that order, the learned District Judge

allowed the Appeal and quashed and set aside the Judgment and order dated 30.10.2010 passed by the Executing Court below Exhibit-32 in Special Darkhast No.13 of 1998.

3. Mr.Raje submitted that the appellants have filed Application-Exhibit-32 under Order 21, Rule 58 of C.P.C. By order dated 30.10.2010, the learned trial Judge allowed that application. Aggrieved by that order, respondent no.1 preferred Misc. Civil Appeal. He submitted that Misc. Civil Appeal is not maintainable in view of Order 43. He submitted that the order passed in an application under Order 21, Rule 58 is not an appealable order.

4. Mr. Karandikar submitted that Misc. Civil Appeal No.58 of 2010 was filed challenging the order below Exhibit-32 (Application under Order 21, Rule 58 for setting aside attachment) as also the order below Exhibit-1 (for setting aside sale). He seeks permission to withdraw that Appeal with liberty to challenge separately the order below Exhibit-32 as also the order below Exhibit-1, by adopting appropriate proceedings. Respondent no.1 is permitted to withdraw the appeal with liberty as prayed for. In view thereof, nothing survives in this Appeal and the same is disposed of with liberty to respondent no.1 to adopt appropriate proceedings for challenging the order below Exhibit-32 as also the order

below Exhibit -1. It is made clear that I have not examined merits of the case. All the contentions on merits are expressly kept open.

5. In view of disposal of Second Appeal, Civil Application No.764 of 2013 does not survive and the same is also disposed of.

(R.G.KETKAR, J.)