

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2258 OF 2015
IN
WRIT PETITION NO.1862 OF 2014

Sushila Bhawarlal Jain and others	... Applicants
v/s	
Brijesh Mohan Hari and others	... Respondents

Ms Priya Ranade i/b M/s Kaikini Phadke and Associates for Applicants.

Mr Karl Tamboly with Mr Vivek Vashi, Ms Shreya Ramesh i/b M/s Bharucha and Partners for Respondent Nos.1 and 2.

**CORAM: V.M. KANADE &
B.P. COLABAWALLA JJ.**

DATE : 12TH AUGUST 2015

P.C.:-

1. We have heard the learned counsel appearing on behalf of the Applicants in Civil Application. By this Civil Application, the Applicants seek a direction directing the Debts Recovery Tribunal I, Mumbai to consider the Applications. The Respondents have raised a preliminary objection regarding the maintainability of the Civil

Application. It is submitted that against the impugned order passed by the DRT on 23rd June 2015, the Applicants had filed Appeal before the DRAT and therefore, the Civil Application itself is not maintainable. Secondly, it is submitted that the Writ Petition has become infructuous since the Petitioners have approached the DRAT and therefore, the relief claimed in the Petition does not survive. In the reply, the learned counsel appearing on behalf of the Applicants submits that it is admitted that the Applicants have filed Appeal against the impugned order before the DRAT. It is however submitted that the direction given by this Court has not been complied with by the DRT. The learned counsel appearing on behalf of the Applicants has invited our attention to the order dated 23rd June 2015.

2. It is not possible to accept the contention of the learned counsel appearing on behalf of the applicants. By the said order dated 23rd June 2015, we have observed that the DRAT has resumed office and the Applicants have alternate remedy of filing an Appeal before the DRAT. We have also observed that the Civil Application filed by the Applicants herein before the DRAT is pending and the Applicants

may decide which remedy they have to pursue. It transpires that the Writ Petition was kept pending.

3. It cannot be said that the directions given by this Court have not been complied with by the DRT and as such, there is no question of entertaining the Civil Application filed by the Applicants.

4. At this stage, it is submitted that the Respondents have already demolished the entire structure and directions may be given to the Respondents not to create third party rights.

5. We are afraid, we are not in a position to pass any order. It is always open to the Applicants to approach the DRAT and seek appropriate directions. Hence, we decline to pass any such order. However, it is clarified that we have not expressed any opinion on merits while not acceding to the request made by the Applicants to grant interim relief. We have declined the request of the Applicants only because they have filed an Appeal before the DRAT and the Applicants can approach the DRAT for the same reliefs. Civil

Application and Writ Petition are disposed of in the aforesaid terms.
If any Application is filed, the same may be decided on its own merits
uninfluenced by the observations made by this Court.

(B.P. COLABAWALLA, J.)

(V.M. KANADE J.)