

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7977 OF 2010

Bhaskar G. Kapote, since deceased
per L.R. Rajendra B. Kapote .. Petitioner
vs.
Revati J. Kusalkar .. Respondent No.5

Mr. Jaydeep Deo for Petitioner.
Respondent Nos. 1 to 4 deleted as per Court's order dt. 5.1.2012.
Mr. S. A. Sawant for Respondent No.5.

CORAM : M. S. SONAK, J.
DATE: 30 MARCH 2015

P.C. :-

1] This petition challenges the order dated 20 July 2010 made by the Joint Civil Judge, Senior Division, Pune, staying Darkhast proceedings in RCS No. 2042 of 1996 pending the decision in Special Civil Suit No. 1652 of 2005 between the petitioner (decree holder) and respondent no. 5 (obstructionist) and respondent nos. 1 to 4 who are the judgment debtors.

2] Although, there may *prima facie*, be some infirmities in the impugned order, the interests of justice would be met if Special Civil Suit No. 1652 of 2005 as well as the Darkhast proceedings are disposed of together by the learned Civil Judge, Senior Division, Pune, as expeditiously as possible and in any case within a period of one year from today.

3] The parties, shall be at liberty to apply to the learned Civil Judge, Senior Division for permission to lead common evidence in respect of the two proceedings. This is because, the obstructionists proceedings in the Darkhast, are in a sense, required to be proceeded with as if they are in the nature of a suit. If such application is made, then the learned Civil Judge, Senior Division to consider the same at the earliest and proceed accordingly.

4] It is made clear that this Court has not examined merits of the matter and as such it will be open to the learned Civil Judge, Senior Division to decide the two proceedings in accordance with law and on their own merits.

5] The writ petition is disposed of in the aforesaid terms. There shall be no order as to costs.

6] Parties to appear before the learned Civil Judge, Senior Division, Pune, before whom both the matters are pending, on 15 April 2015 at 11.00 a.m. and produce authenticated copy of this order. Thereafter it shall be for the learned Civil Judge, Senior Division, to issue further directions in the matter of disposal of the two proceedings within the time limit as indicated.

7] Rule is disposed of accordingly.

(M. S. SONAK, J.)