

Respondent No. 6.

CORAM : V. M. KANADE, &
REVATI MOHITE-DERE, JJ.

DATE : DECEMBER 14, 2015

PC.

1. A preliminary objection is raised by the learned counsel appearing on behalf of Respondent No. 6. It is submitted that appeal is not maintainable. Learned counsel Mr. Mehta submitted that the learned Single Judge was pleased to set aside the exparte decree under Order IX, Rule 13 of the Civil Procedure Code, 1908. He has submitted that no appeal can be filed under Clause 15 of the Letters Patent against such an order, and the appeal is not maintainable. He relied upon the Full Bench judgment of this Court in the case of – ***Elphinstone Spg. and Wvg. Mills Co. Ltd., Appellants Vs. M/s. Sondhi Sons (Pvt.) Ltd., Respondents. [AIR 1962 Bombay 241 (V 49 C 52)]***.

2. We have gone through the said judgment. It is an admitted position that the appeal is filed against an order passed by the learned Single Judge, setting aside the exparte decree under Order 9, Rule 13 C.P.C. Ratio of the above Full Bench judgment squarely

applies to the facts of the present case. Appeal, therefore, is not maintainable. Appeal is accordingly disposed of, reserving the right of the right of the Appellant to file such proceedings, as are available to him, in law. Possession may be handed over to the Respondents within a period of four weeks from today. Hearing of the suit is expedited. Respondent No. 6 is given 4 weeks' time to file written-statement. Learned Single Judge is requested to decide the suit, as expeditiously as possible, on merits and in accordance with law. Appeal is disposed of in the aforesaid terms.

3. In view of disposal of the appeal, Notice of Motion No. 691 of 2015 taken out therein does not survive and is accordingly disposed of.

Sd/-
[REVATI MOHITE-DERE, J.]

Sd/-
[V. M. KANADE, J.]

Vinayak Halemath