

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

SECOND APPEAL NO.28 OF 2014
WAMAN S/O FARIDA UMRE, AND OTHERS

V/S
BHADRANAG DEOSTHAN BHADRAWATI, THROUGH ITS SECRETARY MADHUKAR N.
SATPUTE AND OTHERS

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

**Shri S.D. Malke, Counsel for the appellants.
Mrs. Kirti Satpute, Counsel for R-1.**

**CORAM : A.P. BHANGALE, J.
DATE : JUNE 9, 2015.**

Heard.

It appears from the impugned judgment and order, in Regular Civil Appeal No.117 of 2008, passed by the learned District Judge-1, Warora on 19.11.2013, that the dispute between the multiple number of parties is remanded to the trial Court by giving directions to the trial Court to give opportunity to both the parties to lead their evidence and then to decide the matter expeditiously. The parties were also directed to co-operate with the trial Court.

The learned counsel for the appellants appears to have questioned this order of remand to the trial Court passed by the learned District Judge-1, Warora in appeal on the ground that it

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was not proper for the learned District Judge-1, Warora to interfere with the order of the trial Court whereby the suit was dismissed. According to the learned counsel for the appellants, under Order XVII Rule 2 of the Civil Procedure Code, regarding adjournment of the proceedings, the learned District Judge-1, Warora did not make any correct interpretation of law thus alleging perversity in the order impugned.

I have considered the submissions made by the parties. *Prima facie*, in my opinion, no such substantial question of law would arise. In the facts and circumstances of the case, since the learned first appellate Judge only directed the trial Court to receive evidence as may be led by the parties and then to decide the matter on merits, such order of remanding the real controversy back to the trial Court and calling upon the trial Court to give full opportunity to the parties to lead evidence and then to decide the controversy expeditiously on its merits would not cause any serious prejudice to either of the parties merely because earlier the suit was dismissed by the trial Court. It is essential, in the interest of justice, that the parties must be allowed to lead their evidence, as they may choose, in the trial

Court, and it is for the trial Court to decide the real controversy between the parties finally and on merits according to law on the basis of the evidence which may be led in the trial Court.

In view of above, since the directions to the trial Court by the learned District Judge-1, Warora being in the larger interest of justice and since no serious prejudice would result to either of the parties, as they have full liberty to adduce their evidence as they may choose, no fault can be found with the view taken by the learned District Judge-1, Warora in its judgment and order impugned in this second appeal.

In the result, since for want of any substantial question of law no interference is warranted in the judgment and order impugned, the second appeal is dismissed. There shall be no order as to costs.

JUDGE

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