

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

CIVIL APPLICATION NO.201 OF 2011

IN

SECOND APPEAL NO.521 OF 2011

(Chief General Manager, MSPGCL and others ..vs.. Suresh s/o Wasudeorao Patil)

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

Court's or Judge's orders

Shri A.D. Mohagaonkar, Advocate for the appellants,
Shri M.V. Mohokar, Advocate for the respondent.

CORAM : Z.A. HAQ, J.

DATED : 23-11-2015

For the reasons stated in the application, the appellant No.1 is permitted to file the appeal alongwith the appellant Nos. 2 and 3.

Civil Application is allowed accordingly.

Civil Application No. 614 of 2014.

This is an application filed by the respondent praying that the appeal be dismissed as the appeal is not filed by the competent persons. On perusal of the documents filed on the record, I find that the civil suit was filed by the respondent against the two defendants (1) Director of Personnel, M.S.E.B., Prakashgarh, Mumbai, and (2) Chairman/Secretary, M.S.E.B., Prakashgarh, Mumbai. The above named persons are the appellant Nos.2 and 3. The appellant No.1 has been impleaded because of the subsequent events i.e. bifurcation of the Maharashtra State Electricity Board.

According to the appellant No.1, he is impleaded as the appellant as the judgment and decree is sought to be executed against the appellant No.1. Be that as it may, the appeal cannot be dismissed summarily because of the joinder of the appellant No.1 as the appellant.

The other objection raised on behalf of the respondent is that the appeal is filed without there being Vakalatnama of the appellant Nos.2 and 3. The appeal cannot be dismissed summarily and the learned Advocate can be granted time to file Vakalatnama.

Shri A.D. Mohagaonkar, learned Advocate for the appellants submits that he represented the appellant Nos.2 and 3 before the subordinate Courts. The learned Advocate for the respondent has not been able to point out any provision which necessitates the dismissal of appeal summarily on the ground as raised above.

Though the objection is not raised in the application to the tenability of the appeal on the ground that there is no resolution of company to file appeal, the oral submission is made by Shri M.V. Mohokar, learned Advocate for the respondent on that ground, however, as company is not appellant in the appeal, in my view, the resolution of the company to file appeal is not required. The objection raised on behalf of the respondent is rejected.

Civil application is dismissed.

Second Appeal No.521/2011.

Heard.

Admit, on the following substantial questions of law:

- (i) Whether the suit filed by the respondent claiming fixation of pay scale in 2001, is within limitation when his appointment is in February 1990 ?
- (ii) Whether the negative burden can be placed on the defendant to disprove the claim of the plaintiff ?
- (iii) Whether the civil suit filed by the respondent is maintainable when Maharashtra State Electricity Board is not impleaded as defendant to the civil suit ?

Shri M.V. Mohokar, learned Advocate waives notice for the respondent.

The appellants to file private paper-book and decree forms within six months.

Civil Application No.1137 of 2011.

The learned Advocates for the respective parties submit that the decretal amount is deposited by the appellants before the executing Court and the respondent is permitted to withdraw 50% of the amount.

In view of the above, there shall be stay to the execution of the decree till the decision of the appeal.

50% of the amount lying with the executing Court

shall be kept in fixed deposit in a nationalised bank, initially for a period of three years and it shall be renewed every year till the decision of the appeal.

Civil application is disposed in the above terms.

JUDGE

pma