

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLN. (Z) NO.24 OF 2015
IN
LETTERS PATENT APPEAL NO.179 OF 2007

IN
WRIT PETITION NO.5652 OF 2005 (D)

Abdul Khalil S/o Sheikh Mohammad

-vs-

Gopal Radhakisan Kabra

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.J.T.Gilda, counsel for the applicant-respondent.
Mr.R.A.Haque, counsel for the non-applicant-appellant.

CORAM : SMT. VASANTI A. NAIK &
C. V. BHADANG, JJ.

DATE : 10.06.2015.

By this civil application, the applicant-respondent seeks the dismissal of the letters patent appeal on the ground of tenability.

Shri Gilda, the learned counsel for the applicant-respondent relied on the recent judgment of the Hon'ble Supreme Court, reported in 2015 (3) Mh.L.J. 296 (Radhey Shyam v. Chhabi Nath) to canvass that the letters patent appeal would not be maintainable, as Writ Petition No.5652 of 2005, from the order from which the letters patent appeal arises was and could have been filed only under Article 227 of the Constitution of India. It is stated that as in the writ petition the order passed by the Civil Court in the execution proceedings was challenged, the order was amenable only to jurisdiction under Article 227 of the Constitution of India. It

is stated that since the order was not amenable to writ jurisdiction under Article 226 of the Constitution of India, a letters patent appeal would not lie against the judgment, dated 10/10/2006 in Writ Petition No.5652 of 2005.

Shri Haque, the learned counsel for the non-applicant-appellant, opposes the prayer made in the civil application. It is stated that when the letters patent appeal was entertained, the judgment in the case of *Surya Dev v. Ramchander*, reported in 2004 (1) Mh.L.J. 633 was holding the field. It is further stated that from the prayer made in the writ petition, it can be seen that the writ petition was filed under Articles 226 and 227 of the Constitution of India. It is also stated on behalf of the appellant-non-applicant that the writ petition filed by the respondent was not tenable and it was necessary for the applicant to file a civil revision application.

On a perusal of the judgment of the Hon'ble Supreme Court, reported in 2015 (3) Mh.L.J. 296, we find much force in the submission made on behalf of the applicant-respondent that the letters patent appeal is not maintainable. Admittedly, the order impugned in Writ Petition No.5652 of 2005 was passed by a Civil Court in the execution proceedings. In view of the law laid down by the Hon'ble Supreme Court in the judgment reported in 2015 (3) Mh.L.J. 296, the judicial orders of Civil Courts are not amenable to writ jurisdiction under Article 226 of the Constitution of India and they are amenable to jurisdiction only under Article 227 of the Constitution of India. If that be so, the letters patent appeal is not tenable. The submission made on behalf of the non-applicant that at the

relevant time, the judgment in Surya Dev's case was holding the field and hence, the application should be rejected is not well founded and is liable to be rejected. So also, the other submission that the writ petition ought not have been entertained as a civil revision application was maintainable is a ground which could have been argued in the letters patent appeal on merits if the letters patent appeal was maintainable. This cannot be a ground for opposing the prayer made in the civil application.

In view of the aforesaid, we dismiss the letters patent appeal, as the same is not tenable. No order as to costs.

The learned counsel for the non-applicant-respondent seeks the continuation of the interim relief granted by this Court on the ground that the non-applicant is still in possession of the property and he may be dispossessed.

The apprehension expressed by the non-applicant appears to be incorrect. The learned Single Judge has clearly directed that the suit be decided within a period of one year and after the decision in the suit, the application in the special darkhast should be considered afresh. The prayer for continuation of the interim relief is, therefore, rejected.

JUDGE

JUDGE