

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2000 OF 2014

Balaso Narayan Atpadkar and another ... Petitioners
Vs.
Vrushali Ashok Harshe and others ... Respondents

Mr. S. R. Ghanwat i/b. Mr. V. S. Talkute for Petitioners.
Mr. Uday Warunjikar for Respondents No.1 and 3.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 24, 2016

P.C. :

Heard Mr. Ghanwat, learned Counsel for petitioners and Mr. Warunjikar, learned Counsel for respondents No.1 and 3. Mr. Warunjikar assures that within two weeks from today, he will file appearance on behalf of respondent No.3. Mr. Ghanwat submits that respondents No.1 and 3 are the only contesting respondents. They have filed application for dismissal of the appeal on the ground of non-compliance of order dated 23.08.2011 passed by this Court in First Appeal No.1549 of 2011. In view thereof, Mr. Ghanwat orally prays for deleting respondent No.2 from the proceedings. On the oral application made by Mr. Ghanwat, respondent No.2 is deleted from the proceedings. Rule. Mr. Warunjikar waives service for respondents No.1 and 3. At the request and by consent of the parties, rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 07.01.2014 passed by the learned District Judge-2, Satara below exhibits-12 and 13 in Civil Appeal No.327 of 2012. By that order, the learned District Judge allowed application exhibit-12 made by respondents No.1 and 3

herein and rejected the application exhibit-13 made by the petitioners.

3. Respondent No.1 had instituted Special Civil Suit No.187 of 2002 against the petitioners, hereinafter referred to as defendants No.3 and 4 for partition and separate possession as also for declaration that agreement of sale dated 17.04.2002 executed by defendant No.2 in favour of defendants No.3 and 4 is not binding on her share. By judgment and decree dated 28.06.2011, Suit was partly decreed. Aggrieved by that decision, First Appeal No.1549 of 2011 was preferred by defendants No.3 and 4 in this Court. By order dated 23.08.2011, Appeal was admitted and the printing was dispensed with. Defendants No.3 and 4 were directed to file private paper-books within a period of one year from the date of the order, failing which, Appeal was to stand dismissed for want of prosecution without further reference to the Court.

4. Respondents No.1 and 3 herein filed application exhibit-12 on 14.02.2013 for dismissal of the appeal on the ground that defendants No.3 and 4 did not comply order dated 23.08.2011. Defendants No.3 and 4 filed application exhibit-13 seeking permission to file private paper-book or in the alternative, seeking permission to deposit paper-book charges. By the impugned order, the learned District Judge allowed the application exhibit-12 filed by respondents No.1 and 3 herein and rejected the application exhibit-13 filed by defendants No.3 and 4. Mr. Ghanwat relied upon decision of the Apex Court in the case of ***Kalipada Das @ Mahanto Vs. Bimal Krishna Sen Gupta, (1983) 1 SCC 14*** wherein the Apex Court has held that non-compliance of order for supply of paper-book copies is a procedural requirement and for non-compliance of procedural requirements, appeal cannot be dismissed.

5. Mr. Warunjikar was not in a position to seriously dispute this

proposition.

6. In view thereof, the impugned order dated 07.01.2014 is set aside. Application exhibit-12 is dismissed. Application exhibit-13 is allowed.

7. Mr. Ghanwat submits that within 8 weeks from today, defendants No.3 and 4 will file private paper-book and serve copy in advance on the other side. He further states that defendants No.3 and 4 will not seek further extension of time. Statements made by Mr. Ghanwat are recorded.

8. In view thereof Rule is made absolute in the aforesaid terms with no order as to cost. Defendants No.3 and 4 shall file private paper-book within 8 weeks from today and serve copy in advance on the other side and will not seek further extension. Liberty is reserved to the parties to apply for expeditious disposal of the Appeal. If such application is made, the learned District Judge will decide the same in accordance with law.

(R. G. KETKAR, J.)

Minal Parab