

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
**Writ Petition NO. 4826 OF 2016**

Ramchandra Tayappa Vadar  
(Chavan)(decd) Through Lrs. and Anr ...Petitioners

*Versus*

Shri Ganpati Tayappa Vadar  
(chavan) And Ors ...Respondents

....

Mr. Pratap Patil, Advocate for the Petitioners.

Mr. Suresh M. Sabrad, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 29<sup>th</sup> APRIL, 2016

P.C.

1. Heard Mr. Pratap Patil, learned Counsel for the petitioners and Mr. Suresh Sabrad, learned Counsel for respondent No.1, at length.

2. Mr. Patil seeks leave to delete respondent Nos.2 to 10 on the ground that except respondent No.1 herein, other respondents did not appear in the appeal though duly served. He further submits that respondent No.1, being decree holder, is the only contesting respondent. In view thereof, on the motion made by Mr. Patil, leave to delete respondent Nos.2 to 10 is granted. Amendment shall be carried out forthwith.

3. Rule. Mr. Sabrad waives service on behalf of the respondent. At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

4. By this Petition under Article 227 of the Constitution of India, the petitioners/original defendants have challenged the order dated 10.3.2016 passed by learned Adhoc District Judge-1 Sangli below Exhibit-7 in Civil Misc. Application No.287/2015. By that order, learned District Judge rejected the application made by the petitioners for stay of the trial Court decree.

5. Mr.Patil submitted that the suit instituted by respondent No.1 for partition and separate possession is decreed. Against that, the petitioners preferred appeal. Appeal was admitted and decree for partition was stayed. However, the appeal was dismissed in default and also for not depositing the paper book charges. The petitioners took out application for restoration and pending that application, took out application at Exhibit-7 for staying the decree. By the impugned order, learned District Judge rejected that application. Mr. Patil assures that the petitioner will pay paper book charges within

two weeks in the trial Court upon producing the authenticated copy of this order. He further submits that the petitioner will extend full cooperation for the early disposal of the appeal and will not seek any undue adjournment. He also relied upon decision of Apex Court in ***Kalipada Das vs. Bimal Krishna Sen Gupta, AIR 1983 SC 876*** to contend that learned District Judge was not justified in dismissing the matter for not depositing paper book charges.

6. On the other hand, Mr. Sabrad submitted that the petitioners did not deposit the paper book charges as also despite this Court passing the order dated 17.10.2015 in Writ Petition No.9362/2015, the petitioners are not appearing in the appeal and are not interested in conducting the appeal. He, therefore, submitted that in the event of the Court allowing restoration application, the partition proceedings may be permitted to go on and stay of the actual possession may be ordered. He further submitted that learned District Judge may be directed to dispose of the appeal in a time bound manner.

7. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material

on record.

8. As Mr. patil has assured that the petitioners will extend full cooperation for disposal of the appeal and also will not seek undue adjournment, I find that the order dismissing appeal in default deserves to be set aside. In view of decision of Apex Court in **Kalipada Das** (supra), learned District Judge was not justified in dismissing the appeal for not depositing paper book charges. Hence, the impugned order dated 10.3.2016 as well as order dated 5.11.2015 passed below Exhibit-1 in RCA No.78/2009 are set aside. Civil Misc. Application No.287/2015 for restoration stands allowed. As and by way of interim order, pending appeal, let the partition proceedings go on however actual and physical possession of respective parties shall not be disturbed. Having regard to the fact that appeal is of the year 2009, learned District Judge is requested to dispose of the appeal within three months from production of the authenticated copy of this order. Rule is made absolute in aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)