

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

WRIT PETITION (St.) NO. 11638 OF 2016

Smt. Annubai Mahapati Gaikwad & anr.

.. Petitioners

Vs

Shri Kishna dadu Sapkal & ors.

.. Respondents

Mr. Nilesh W. Wable, for Petitioners.

***CORAM : N.M. Jamdar, J.
Tuesday, 18 October 2016.***

P.C. :

Not on board. Taken on production board by way of praecipe.

2. By the impugned order dated 28 March 2016 in this Petition, the learned District Judge Islampur, has decided not to call for Record and Proceedings for hearing of the appeal and has also directed that paper book is not necessary.

3. Heard learned counsel for Petitioners.

4. In a given situation it may be open for the learned District Judge to proceed with the suit on the basis of the documents that are available. However first appeal being a substantive remedy given by Code of Civil Procedure generally, the appellant should be given an opportunity to present its case with reference to Record and

Proceedings of the trial Court. The learned District Judge has only stated that as execution is not stayed at present the Record and Proceeding is not required. Therefore, the learned District Judge has not taken a final decision to decide the appeal without Record and Proceeding. The learned District Judge will no doubt keep in mind the prejudice that may likely to be caused to Petitioners in case Petitioners seek to rely on Record and Proceeding which are not available. The learned District Judge will no doubt keep this aspect in mind and ensure that no prejudice is caused to the appellant and the appeal is decided on its own merits. Therefore, in case during the proceedings in the appeal, the learned District Judge comes to the opinion that the appeal cannot be decided without Record and Proceeding, it will be open to the learned District Judge, Islampur to call for the Record and Proceeding. With these observations, the Writ Petition is disposed of.

(N.M.Jamdar, J.)