

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER (ST.) NO. 18082 OF 2015
WITH
CIVIL APPLICATION (ST.)NO. 18086 OF 2015 IN A.O. (ST)NO. 18082 OF 2015**

M/s. J.P. Construction, Sangli
through its proprietor ... Appellant/Applicant
Vs.
The State of Maharashtra & Ors. ... Respondents

Mr. Manoj Patil, Advocate for the appellant/applicant.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **16th February, 2016.**

P.C.:

Admit. The Appeal is heard finally and decided at the stage of admission.

2. This Appeal from Order is directed against the order dated 7th May, 2015 and also earlier order dated 19th January, 2015. The appellant has filed Special Civil Suit No. 631 of 1994 for money recovery against the Government and the suit was decreed on 29th March, 1997. Against this, First Appeal No. 1866 of 2002 was filed in the High Court. Due to increase in pecuniary jurisdiction, the Appeal was transferred to District Court, Kolhapur and it was renumbered as Regular Civil Appeal No. 90 of 2013. At the time of hearing of the Appeal, Application Exhibit 17 was moved by the appellant for withdrawal of the amount. The appellant, i.e.,

respondent therein, filed Application Exhibit 21 that in the suit, the defendants did not file written statement. Therefore, the defendants/State moved an application in Appeal that they be allowed to file written statement. Thereafter third Application, i.e. Exhibit 23 was filed by State raising the issue of territorial jurisdiction, i.e., whether the suit is to be decided by the Judge of Jaisingpur or Ichalkaranaji. After hearing these three applications, the learned District Judge, Jaisingpur remanded the entire Appeal to Civil Judge Senior Division, Jaisingpur giving direction that all the Applications, i.e., Exhibits 17, 21 and 23 are to be heard and decided by him. The said order was challenged by the present appellant by filing Writ Petition. However, as the Writ Petition was not maintainable challenging this order, some directions were given by the High Court to the District Judge to deal with the issue pursuant to which the District Judge, Jaisingpur again passed similar order dated 7th May, 2015 of remanding the matter to Civil Judge Senior Division, Jaisingpur directing that Exhibits 17, 21 and 23 are to be decided by him. Hence this Appeal.

3. The learned counsel for the appellant has submitted that neither the appellant nor the respondent has asked for remand of the Appeal. These applications can be decided by the Appeal Court and there was no need of remand.

4. None present for the State of Maharashtra though the matter was called out in the first session and again in the second session. Be that as it may, I have gone through the relevant orders and I am of the view that the impugned orders passed by the learned District Judge, Jaisingpur are to be set aside. The order of remand is not to be used casually and in routine manner when the Appellate Court is required to decide the issue. The Applications at Exhibits 17, 21 and 23 are the applications which are necessarily to be decided by the Appeal Court. Hence, the orders of the District Judge are hereby set aside with a direction that the Appeal Court to decide these three Applications at the earliest. Appeal from Order is allowed. In view of this, Civil Application is also accordingly disposed of.

(MRIDULA BHATKAR, J.)