IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 557 OF 2009
IN
SECOND APPEAL NO. 792 OF 2001

Shakeel Bapusaheb Vantamuri
(since deceased, through Lrs.)
1b(i) Smt.Shamim Shakeel Vantamuri
& ors. … Applicants
v/s
Nazir Chand alias Appalal Pandat & 7 ors. … Respondents

ALONG WITH
CIVIL APPLICATION NO. 347 OF 2009
IN
SECOND APPEAL NO. 792 OF 2001

Nazir Chand alias Appalal Pandat & 7 ors. … Applicants
v/s
1(a) Smt.Mumtaz Bapusaheb Vantamuri
1(b) Shakeel Bapusaheb Vantamuri
2. President, The Kolhapur Urban Co-op.
Bank Ltd., Kolhapur. … Respondents

AND
CIVIL APPLICATION NO. 553 OF 2001
IN
SECOND APPEAL NO. 792 OF 2001

1(a) Smt.Mumtaj Bapusaheb vantamuri
1(b) Shakeel Bapusaheb Vantamuri … Applicants
v/s
Nazir Chand alias Appalal Pandat & 7 ors. … Respondents

Mr.Hriday Khurana i/by L.J.Law for the applicant in CAS No.557 of 2009 and CAS No.553 of 2001 and Appellant in SA No.792 of

2001.

Mr.A.P. Kulkarni for Resp. Nos.1 to 8 and applicant in CAS No.347 of 2009.

CORAM: N.M. JAMDAR, J.
DATED : 1 APRIL 2016

P.C.:

Civil Application No.557 of 2009 is taken out by the heirs of the original Appellant on 31 January 2009 for setting aside the abatement of the appeal. Civil Application No.347 of 2009 is taken out by the Respondents on 20 January 2009 for the direction to dismiss the appeal as abated, to vacate the interim order and issue necessary directions.

2 Respondents filed the suit bearing No.211 of 1982 in the Court of Civil Judge, Junior Division, Kolhapur, for redemption of mortgage of the suit property. The suit was dismissed. Thereafter the appeal was filed by the Respondents which was allowed by the District Judge, Kolhapur, on 8 May 2001.

3 The Appellant was directed to hand over possession of the Suit property to the Respondents. In this appeal, notice before admission was issued on 12 July 2001 and ad-interim relief was granted. By an order dated 27 September 2001, ad-interim relief was vacated and liberty was granted to apply for ad-interim relief after removal of the office objections. Thereafter the appeal was admitted on 7 November 2001, and ad-interim order was

continued.

4 In the civil application taken out for abatement, during the pendency of the appeal, the original Appellant expired on 13 October 2004. Thereafter Applicant No.1(b) was brought on record, who has expired on 24 March 2008.

5 It is stated that the Appellants were not aware of the pendency of the appeal and when copy of the civil application taken out by the Respondents was served, they came to know about the appeal. The reason stated in the civil application cannot be stated to be a impossible one so as not to set aside the abatement and dismiss the appeal as abated.

6 The Appellants have mortgaged the suit property on 8 May 2001 immediately after filing of the appeal on 4 July 2001. The mortgage deed dated 8 May 2001 is executed after filing the present appeal. The Applicants have written to the Bank that they have no objection if the suit property is sold. Considering this conduct, though I am inclined to set aside the abatement and restore the appeal, the Applicants are not entitled to any equitable relief. The application filed by the Respondents is pending since last seven years, yet no reply is filed.

7 Accordingly, the civil applications are disposed of as under :

(I) As regard Civil Application No.557 of 2007, the same is allowed in terms of prayer clauses (a) and (b).

(II) Amendment to be carried out within the period of two weeks from today, failing which the appeal will stand dismissed for non-prosecution.

(III) Civil Application No.347 of 2009 to be heard along with the main appeal, however, in the meanwhile, there will be no interim relief operating in the second appeal and the earlier reliefs stand vacated and that the Respondents – original Appellants are not entitled to any equitable relief for stay of execution of the decree in view of the conduct enumerated above. All the parties to the civil application shall also maintain status-quo in respect of the suit property and that original Plaintiff is entitled to take appropriate steps since there is no interim order in the appeal.

8 Civil Application No.553 of 2001 is taken out by the Appellants for stay of execution of the impugned judgment and decree. In view of what is stated above, the relief prayed for cannot be granted. The civil application is accordingly rejected. Ad-interim relief granted earlier is vacated.

(N. M. JAMDAR, J.)