

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 11740 OF 2016

Raghunath Vishnupant Ganbavale
(since deceased) Through LRs.

...Petitioners

Versus

Mohan Shankar Bhokare
And Anr.

...Respondents

....

Mr.Rahul P. Walvekar, Advocate for the Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 7th OCTOBER, 2016

P.C.

1. Not on board. At the request of Mr.Walvekar taken up for admission.
2. Heard Mr.Rahul Walvekar, learned Counsel for the petitioners, at length.
3. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'plaintiffs' have challenged the judgment and order dated 29.2.2016 passed by the learned District Judge-4, Kolhapur below Exhibit-1 in Regular Civil Appeal No.115/2014. By that order, Appellate Court stayed the hearing of appeal.
4. Mr.Walvekar submitted that Writ Petition No.3383/2009 was instituted by the plaintiffs challenging

the order dated 3.10.2008 passed by the learned trial Judge below Exhibit-72 in R.C.S. No.630/2005. By that order, the learned trial Judge had allowed the application made by Rohini Kulkarni under Order I Rule 10 of C.P.C. for impleading her as 'defendant'. Initially, notice before admission was issued and ultimately as none appeared on behalf of the respondents therein, Rule was issued on 4.3.2010. Rule on interim relief was made returnable on 21.4.2010. Till returnable date, ad-interim order in terms of prayer clause (c) was granted. Prayer clause (c) reads thus:

“(C) Pending the hearing and final disposal of the present writ petition, the effect, operation, implementation and execution of the aforesaid impugned Judgment and order dated 3/10/2008 passed below Exh.72, by the Hon'ble Civil Judge, Junior Division, Kolhapur, in R.C.S. No.630 of 2005, below Exh.72, be stayed/suspended.”

5. Mr. Walvekar submitted that by prayer clause (c) operation and implementation of order dated 3.10.2008 passed below Exhibit-72 in R.C.S. No.630/2005 was stayed. In other words, this Court did not stay further proceedings of Regular Civil Suit No.630/2005. The learned District Judge, however, was of the view that as High Court had stayed the further proceedings of the suit, learned trial Judge was not justified in disposing of suit on 14.2.2014. He submitted that in any case now this Court has disposed

of Writ Petition No.3383/2009 on merits, the learned District Judge may be directed to decide appeal on its own merits.

6. I have considered the submissions advanced by Mr.Walvekar. I have also perused the material on record. As noted earlier this Court granted interim relief in terms of prayer clause (C) . Perusal of prayer clause (C) shows that this Court has stayed the effect, operation, implementation and execution of the judgment and order dated 3/10/2008 passed below Exh.72 in R.C.S. No.630/2005. However, this Court did not stay the further proceedings of R.C.S. No.630/2005. In view thereof, as also having regard to the fact that Writ Petition No.3383/2009 is finally disposed of, liberty is reserved to the plaintiffs to file appropriate application before the learned District Judge for deciding the appeal on its own merits. If such application is made, the learned District Judge will proceed to decide appeal on its own merits and in accordance with law. Subject to this clarification, no further orders are necessary. Petition is disposed of. Order accordingly.

(R. G. KETKAR, J.)