

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

WRIT PETITION NO. 11778 OF 2015

Shri Guruswami Ganga Naikar

... Petitioner

Versus

Shri Ulhas Ramchandra Dharane & Ors.

...Respondents

....

Mr. Mayur Khandeparkar a/w. Mr. Vikas Salvi i/b. Vikas Salvi & Associates for the Petitioner.

Mr. Sandesh Patil i/b. Mr. Chintan Shah for Respondent No.1

...

CORAM : N. M. Jamdar, J.

Tuesday 23 AUGUST, 2016

P. C.

. Rule. Rule made returnable forthwith. By consent of the parties, taken up for disposal.

2. The Petitioner challenges the order dated 25 February 2015, granting leave to the Respondents to file an appeal challenging the judgment and decree dated 28 January 2014, passed by the learned Civil Judge, Junior Division, Jawhar.

3. Heard the learned counsel for the parties.

4. The learned counsel for the Petitioner has advanced various submissions as to why the Respondents have no right to

prefer an appeal as he is not a person aggrieved. The main ground on which the order is assailed however is that it is passed without hearing the Petitioner. The learned counsel for the Respondents has sought to justify the order passed on merits contending that the Respondents are aggrieved party who can maintain the appeal. However, it is not necessary to go into merits of the matter, as before granting leave to file appeal, the case of the Petitioner has not been considered by the court. Instead of deciding the locus of the Respondents to maintain appeal for the first time in this petition, it will be appropriate that this issue is decided by the District Judge. Nothing has been shown by the Respondents as there is an exclusion of principles of natural justices in the statutory enactment governing application to be filed seeking leave to the appeals.

5. In these circumstances, since the order has been passed without hearing the Petitioner, it will be appropriate that it is set aside and the application filed by the Respondents is heard on its own merits after hearing the Petitioner.

6. Accordingly, the judgment and order dated 25 February 2015 is set aside and Civil Miscellaneous Application no.376 of 2014 stands restored to file of the learned District Judge, Thane.

7. Rule is made absolute in the above terms.

8. All contentions of the parties as regards the application, are kept open.

9. The parties will appear before the learned District Judge on 13 September, 2016.

10. The learned counsel for the Respondents states that the learned District Judge has granted an order of status quo, which may be continued. The learned counsel for the Petitioner opposes the same. It appears that the concern of the Petitioner is that Respondents No.1 will proceed to execute the decree for specific performance and obtain a registration of sale deed of the suit property. The learned counsel for the respondents states that, as of today, the respondents have no intention to immediately proceed to execute the decree and not at least till 22 September 2016. Even if the decree is put to execution, the process of execution itself will also take some time. In view of this fact, since the interest of Respondent No.1 is adequately protected, it is not necessary to continue the order of status quo.

11. The learned District Judge will make endeavour to dispose of the application as early as possible keeping in mind the time bound arrangement made between the parties recorded above.

(N. M. Jamdar, J.)