

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR.**

**CIVIL APPLICATION (CAA) NO. 126/2014**  
**IN APPEAL AGAINST ORDER NO. 94/2007.**

Gulshan Santdas Mirchandani

**-VERSUS-**

Doma Wasudev Rahate

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Office notes, Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.

Court's or Judge's Orders

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**CORAM : B.P. DHARMADHIKARI, J.**

**DATE : AUGUST 26, 2016.**

Heard Shri P.A. Abhyankar, learned Counsel for the applicant/appellant and Shri R. Vyas, learned Counsel for non-applicant/respondent nos. 5 to 8. Nobody appears for other non-applicants/respondents though they are served.

2. Prayer in this Civil Application is to recall order dated 20.08.2008 in Appeal Against Order No.94/2007, disposing of the same.

3. Shri Abhyankar, learned Counsel states that after the Appeal Against Order was disposed of, the appellant/applicant learnt about an

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advertisement/public notice issued by Bank of India, as a secured creditor. By that advertisement a sale notice was published and property involved in Appeal Against Order or the suits mentioned in order of this Court dated 20.08.2008, was shown as secured assets by the Bank. He submits that thus Mr. Vivek Baliram Waretwar, whose name has been shown as Director of the borrower company in said public notice has misled this Court. This Court on 20.08.2008 acted as if the property was un-encumbered and therefore, in domain of the respondents before this Court. Mr. Vivek Waretwar, was acting as power of attorney holder of respondents in the matter and Shri Madkholkar, Advocate represented respondents through said power of attorney in Appeal Against Order No. 94/2007.

4. He contends that as this Court was not knowing correct facts and a fraud has been played upon it, the suit instituted by the present applicant vide Special Civil Suit No. 1099/2006 came to be stayed and it remained stayed. He also points out that M.J.C.No. 143/2007, mentioned in the order was rejected and against that rejection Writ Petition No. 6383/2012 was filed. That Writ Petition was disposed

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of as withdrawn with liberty to file Appeal Against Order in terms of Order 43 Rule 1(k) of Civil Procedure Code.

5. Neither Shri Abhyankar nor Shri Vyas, learned counsel appearing for the parties are aware of filing of any such appeal thereafter.

6. Shri Abhyankar, learned counsel submits that steps taken by the secured creditor namely Bank of India, were questioned before the Debt Recovery Tribunal by the present appellant and ultimately the debt of Bank of India was satisfied by M/s. Sarth Engineering, therefore, Bank of India was not required to proceed against the suit property. He states that the suit property is no longer a secured asset.

7. In this situation, according to the applicant/appellant, he should be given liberty to move appropriate application for amendment of his Civil Suit and to seek a prayer for restoration of possession of suit property, as non-applicants then did not inform the correct facts to this Court and are not bothered about its possession or safety.

8. Shri Vyas, learned Counsel appearing for non-applicant nos. 5 to 8 denies that non-applicant

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nos. 5 to 8 are not bothered about the safety or security of the property. However, he submits that in the light of these developments, subject to interim orders if any, operating in the proceedings challenging rejection of M.J.C.No.143/2007, this Court may pass suitable orders on Civil Application No.126/2014.

9. Taking over all view of the matter, I find that in the light of these developments, the applicant / appellant can be permitted to amend his Special Civil Suit No. 1099/2006. After such amendment, in the light of subsequent developments i.e. developments after 20.08.2008 and the fact of creating of encumbrance on suit property, which is claimed to have been learnt thereafter, the applicant / appellant needs to be given an opportunity to move appropriate application seeking suitable temporary injunction.

10. Accordingly, with said liberty and with a clarification that this liberty can be exercised only if there are no orders to the contrary in proceedings [if any], instituted challenging rejection of M.J.C. No. 143/2007, Civil Application No. 126/2014 is partly allowed and disposed of. No costs.

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**CIVIL APPLICATION NO. 127/2014.**

This application is filed seeking leave to amend Appeal Against Order, after orders dated 20.08.2008 were recalled.

2. In view of the orders passed today on Civil Application No. 126/2014 above, Shri Abhyankar, learned counsel appearing for the applicant/ appellant seeks leave to withdraw the present application, keeping all contentions therein open. Accordingly, Civil Application No. 127/2014 is disposed of as withdrawn. Needless to mention that all rival contentions about it are kept open. No costs.

**JUDGE**

Rgd.

**CERTIFICATE**

I certify that this judgment/order uploaded  
is a true and correct copy of original signed  
judgment/order.

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