

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

FIRST APPEAL NO.848/2014.

Nav Vidya Niketan Shiksha Sanstha and others.

-VERSUS-

Abdul Jabbar Khan Gaffar Khan and others.

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

Court's or Judge's Orders

CORAM : B.P. DHARMADHIKARI &
KUM. INDIRA JAIN, JJ.

DATE : AUGUST 08, 2016.

It appears that as per orders of this Court dated 20.07.2016, the matter was directed to be placed on 05.08.2016 for final hearing at the end of Board. On 05.08.2016, nobody appeared for the appellants and Shri R.K. Thakkar, Advocate sought adjournment for Shri A.N. Vastani, Advocate for the appellants. It was opposed by Shri A.H. Jamal, learned Counsel appearing for the respondents. He submitted that he was not seeking any order to the prejudice to the appellants in the present matter.

2. Today when the matter is called out, there is no appearance for the appellants.

2

3. Shri A.H. Jamal, learned Counsel for the respondents states that Regular Darkhast No.4/2009 filed by the present respondents was withdrawn under mistaken notion and wrong advise. He submits that it is necessary for the present respondent no.1 to prosecute that Regular Darkhast further so as to recover possession of the suit property. He therefore, seeks a suitable direction from this Court. According to him, in that event, objection raised by the appellants can also be restored back to the file of Regular Darkhast and the same can be looked into by the Executing Court.

4. He submits that as Regular Darkhast was withdrawn, the Executing Court did not maintain and entertain the objection of present appellants to its withdrawal. Appellants therefore, filed a Suit bearing Special Civil Suit No. 67/2013 and by the impugned judgment dated 24.09.2014, that suit has been dismissed because of Section 47 of the Civil Procedure Code. Learned Counsel submits that as respondent no.1 is seeking restoration of Regular Darkhast No.4/2009, it is not necessary for the appellant to prosecute any suit like Special Civil Suit No.67/2013,

3

and his objection in that Regular Darkhast can be adjudicated upon. He also submits that no prejudice is caused to the appellants if his request is granted.

5. We find that orders dated 15.03.2015 disposing of the Execution in Regular Darkhast No,4/2009 passed by the 4th Joint Civil Judge, Junior Division, Amravati are produced along with Civil Application No.1043/2015. Its' perusal shows that the decree holder (present respondent nos. 1 and 2), were seeking leave to withdraw that Darkhast. While the present appellants were opposing it. The Executing Court took a view that as decree holder was withdrawing Darkhast unconditionally and was not seeking any warrant of possession against the objector (present appellants), Regular Darkhast was rendered infructuous. Accordingly the same has been disposed of.

6. In this situation, in view of the statement made by respondent nos. 1 and 2 and arguments advanced on their behalf, it is clear that dismissal of Special Civil Suit No.67/2013, does not result in any prejudice to the present appellant.

7. Respondent nos. 1 and 2 have to move

4

appropriate application before the 4th Joint Civil Judge, Junior Division, Amravati seeking appropriate orders for restoration of Regular Darkhast No.4/2009. It is apparent that further prosecution of Regular Darkhast No.4/2009, was also felt necessary by the present appellants. If Regular Darkhast is restored, the Executing Court has to decide the objection pending therein as per law. We therefore, find substance in the contention of Shri Jamal, learned Counsel for the respondents that no prejudice is caused to the appellant in the matter.

8. In this situation, with liberty to respondent nos. 1 and 2 to move appropriate application before the 4th Joint Civil Judge, Junior Division, Amravati for restoration of Regular Darkhast No.4/2009 back to file, we dispose of the present appeal. If such an application for restoration is filed, the Executing Court shall attempt to decide the same at the earliest. Rule discharged. No costs. All pending Civil Applications are also disposed of.

JUDGE**JUDGE**

Rgd.

CERTIFICATE

I certify that this judgment/order uploaded
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