

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

WRIT PETITION No. 10476 OF 2013

Ku. Bhakti Chetan Bataviya and Ors. ...Petitioners
Vs.
Shri Parasmal Motilal Chordiya and Anr. ...Respondents

Mr. Pradeep Thorat a/w. Ms. Aditi Naikare for Petitioners
Mr. Sandip Shinde for Respondent No.1

CORAM : M.S. SANKLECHA, J.
WEDNESDAY, 23RD AUGUST, 2017

P.C.

1. This petition challenges the order dated 4th September, 2013 passed by the Joint Civil Judge, Senior Division Nasik. The impugned order rejects the Petitioners' (Original Defendant No.5) application for stay under section 10 of the Civil Procedure Code (Code) of the Special Civil Suit No. 132 of 2011 on account of a pending earlier Suit No.87 of 2011. This on the ground that the Issues in this suit i.e. SCS No. 132 of 2011 have yet to be framed and it is only thereafter an appropriate view could be taken whether the issues arising herein are directly substantially arising in the previously instituted suit viz. SCS No. 87 of 2001 to stay the subject suit

i.e. subsequent.

2. I am informed that the pleadings are complete. However, the issues could not be framed as there was an ad-interim stay to the proceedings before the Trial Court granted by this Court pending this petition.

3. In the above view, this petition could be disposed of without considering the merits of the impugned order dated 4th September, 2013 for the reason that pleadings are now complete and the entire controversy can be resolved by directing the trial court to frame the Issues expeditiously. The Petitioners would, thereafter, if advised, file a fresh application under section 10 of the Code. This application for stay would be decided on its own merits, without being influenced the order dated 4th September, 2013.

4. Petition is disposed of in the above terms. No order to costs.

[M. S. SANKLECHA, J.]