

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION ST NO. 34411 OF 2016
IN
FIRST APPEAL NO. 774 OF 2013

Anant Shridhar Navare & Ors	...Applicants
<i>Versus</i>	
Dattatrey Shridhar Navare & Ors	...Respondents

Mr SV Pitre, *for the Applicants.*
Mr GS Godbole, *with Minal Chandnani, i/b JS Chandnani, for*
Respondents Nos. 2(1), 2(2), 2(3) and 2(4).

CORAM: G.S. PATEL, J
DATED: 19th July 2017

PC:-

1. The appeal was admitted here at a time when that could have been done, i.e., when this Court had the pecuniary jurisdiction. At that time, a conditional order was passed on 5th March 2014 directing the appellant to file a private paper-book within one year. In default, the appeal was to stand dismissed without further reference to the Court. The appellant defaulted. The appeal, therefore, stood dismissed.

2. The respondents have in the meantime moved in execution.

3. Also in the meantime this Court has lost its jurisdiction to entertain the appeal at all by virtue of the Maharashtra Civil Courts (Amendment) Act 2015, which raised the pecuniary jurisdiction of the District Courts to Rs 1 crore.

4. The result is that it is no longer possible for this Court to restore the appeal. It is not possible to grant a stay on execution. All this can only be done before the District Court. I cannot even restore the matter for the purposes of transferring it because any such restoration would have to be to this Court. Nor can I restore the matter to the file of the District Court, because it was never filed there.

5. To complicate matters even further, the original appellant has passed away and this civil application has been filed by his heirs and legal representatives. This is not maintainable. Those legal heirs would, if they are to file a separate appeal, need to seek leave of the Court before which the appeal lies to maintain that appeal. That application for impleadment will, for the reasons set out above, also not lie here.

6. There is no other option but to dismiss the civil application. However, liberty to the heirs and legal representatives of the original appellant to file the necessary application for leave and a substantive appeal of their own, if permissible in law, before the District Court, Raigad at Alibag.

7. The R&P has not yet been received.

8. A set-off or adjustment of the court fee may be considered, given that court fees have been paid in this Court. The applicants will be at liberty to apply for such an adjustment once they obtain leave from the appropriate court.

9. The civil application is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)