

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

Second Appeal No.401 of 2015
(Narayan Ramji Jadhav v. Vasant Mahadeo Palsolkar (Palshikar), since
Dead, through LR's. Vinod Vasant Palsolkar (Palshikar) and others)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri R.R. Deshpande, Advocate for Appellant.

Coram : R.K. Deshpande, J.
Date : 12th January, 2017

The Trial Court passed an order on 5-7-2007 dismissing the suit in default without adverting to any of the contentions raised on the merits of the matter. On that date, the plaintiff was personally present before the Court. Regular Civil Appeal No.79 of 2013 preferred by the plaintiff under Section 96 of the Code of Civil Procedure has been dismissed by the lower Appellate Court on 29-10-2014, holding that the order passed by the Trial Court does not come within the purview of 'decree', as defined under Section 2(2) of the Code and hence the appeal is not maintainable. The lower Appellate Court has observed that the Trial Court dismissed the suit in default on 5-7-2007 under Order XVII, Rule 2 of the Code, and hence recourse under Order IX, Rule 9 of the Code is available to the plaintiff. No substantial question of law arises out of such view taken by the lower Appellate Court.

The second appeal is dismissed.

Needless to say that it is open for the appellant-plaintiff to move an application before the Trial Court under Order IX, Rule 9 of the Code with an application under Section 14 of the Limitation Act, which shall be considered by the Trial Court in accordance with law.

Judge.

Lanjewar