

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

Civil Application (CAS) No.368 of 2017

In

Second Appeal No.28 of 2016

[Dipak Ramdas Ingole v. Nivrutti Baliramji Balode]

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's order	Court's or Judge's orders
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Shri P.N. Shende, Advocate for Applicant/Respondent.
Shri A.B. Patil, Advocate for Non-Applicant/Appellant.

Coram : R.K. Deshpande, J.

Date : 4th August, 2017

Shri Shende, the learned counsel appearing for the applicant-respondent has filed this application for recall of the order dated 24-2-2017 passed on Civil Application No.884 of 2016. By this order, this Court has confirmed the order of injunction in terms of prayer clause (a) of the civil application and it is directed that the same shall continue to operate.

Shri Shende for the respondent submits that the copy of the reply was tendered to Shri Patil, the learned counsel appearing for the non-applicant/appellant on 14-10-2016, but due to inadvertence, it was not filed in the Court. He, therefore, submits that the learned counsel for the appellant should have pointed out to this Court that the reply was already filed. He submits that the Court, therefore, proceeding on the footing that

there is no reply filed, granted the interim relief.

Heard the learned counsels appearing for the parties on the question of grant of interim relief afresh.

On 20-6-2016, this Court, while admitting the second appeal and recording that it has already framed the substantial question of law, passed an order on Civil Application (CAS) No.78 of 2016 as under :

“ Heard the learned counsels appearing for the parties.

The document at Exhibit 123 considered by the lower Appellate Court to hold that the plaintiff-respondent is in possession of the suit property is obviously contrary to the contents of the said document. The documents at Exhibits 129 and 130, which are spot panchanama and report indicate the possession of the appellant-defendant.

In view of this, there shall be interim relief in terms of prayer clause (a) of this civil application, which shall continue to operate pending the decision of this appeal.

The civil application is disposed of.”

Shri Shende, the learned counsel for the respondent, could not point out any infirmity in passing the aforesaid order. I, therefore, do not find any reason to recall the said order.

Civil Application (CAS) No.368 of 2017 is dismissed.

Judge

Lanjewar