

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

CIVIL REVISION APPLICATION NO.47 of 2016

Teli Samaj Panch Committee, Bhandara Thr. its President Balkrishna Motiram Selokar
-vs-

Bala @ Balkrishna Mahadeo Kumbhalkar and Ors.

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

Court's or Judge's Orders.

Shri N. A. Vyawahare, Advocate for applicant.
Shri N. S. Khandewale, Advocate for respondent
Nos.1,2(a) to 2(c).

CORAM : A.S.CHANDURKAR, J.

DATE : February 14, 2017

In view of notice for final disposal being served on parties, the revision application is admitted and taken up for final adjudication. The order dated 20/03/2016 passed below Exhibit-14 in RCA No.107/2015 thereby holding the appeal filed by the present respondents to be maintainable is the order under challenge in the present revision application.

The applicant had filed suit for possession after removal of encroachment. Said suit was decreed on 15/10/1976. In execution proceedings, the non-applicants filed an application below Exhibit-60 seeking restoration of the land on the ground that the judgment debtors had been wrongly dispossessed. The Executing Court rejected said application on 28/09/2015. Being aggrieved, the non-applicant filed appeal under Section 96 of the Code of Civil Procedure, 1908. On an

objection being raised, the Superintendent of the Court put up a note before the learned Principal District Judge and it was observed that the appeal was maintainable. On being noticed, the applicant raised objection to the maintainability of the appeal and by the impugned order this objection has been rejected.

After hearing the respective counsel for the parties, it can be seen that the applicant has not been heard on merits of objection taken to the maintainability of the appeal. His objection has been rejected by relying upon the office notice and the order dated 07/11/2015 passed by the learned Principal District Judge in administrative capacity. Hence with consent of counsel for the parties, the order dated 28/03/2016 passed below Exhibit-14 is quashed and set aside. Exhibit-14 is restored to file. The Appellate Court shall heard both the sides and decide the objections in accordance with law without being influenced by the observations made on 07/11/2015 by the learned Principal District Judge, Bhandara in administrative capacity.

Civil revision application is allowed in aforesaid terms. No costs.

The learned counsel for the parties submit that the parties shall appear before the Appellate Court on 16/03/2017 so as to dispense with issuance of notice by the Court. Statements accepted.

JUDGE