

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3085 OF 2018

VISHWANATH DAGDU KHADKE THROUGH LRS
VERSUS
ABDUL RASHID SHAIKH BISMILLAH BAGWAN THROUGH LRS

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Advocate for Petitioners : Shri Shah J.R.
Advocate for Respondents 1 to 5 : Shri Patil Hanmant V.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 26, 2018

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PER COURT :-

1. While issuing notices on 27.3.2018, I had recorded the submissions of the learned counsel for the petitioners in my order, which is as follows:-

“1. The petitioners are aggrieved by the order dated 05/03/2018, passed by the Appellate Court, by which, application Exhibit 19 and 23 filed by the petitioners/appellants praying for leave to add the third parties who have purchased the suit property, has not been decided and the said applications are kept pending to be taken up along with Regular Civil Appeal No. 95/2002.

2. The grievance of the learned counsel for the petitioners/appellants is that the application for seeking addition of the third parties has been treated to be an application under Order XLI Rule 27 of the Code of Civil

Procedure and the Appellate Court, by relying upon the judgment of the Hon'ble Apex Court in Union of India Versus Ibrahim Uddin [(2012) 8 SCC 148], has concluded that the said application will have to be decided along with the pending appeal.

3. Reliance is placed upon the judgments of the Hon'ble Supreme Court which are as under :

- 1) Durga Prasad and another Versus Deep Chand and Others [AIR 1954 SC 75],
- 2) Dwarka Prasad Singh and others Versus Harikant Prasad Singh and Others [(1973) 1 SCC 179] and
- 3) Thomsan Press (India) Limited Versus Nanak Builders and Investors Private Limited and Others [2013) 5 SCC 397].

4. Prima facie, I am of the view that the appellate Court has misread Order XLI Rule 27 of the C.P.C. while considering application Exhibit 19, by which, the addition of parties was sought.

5. Issue notice to the respondents, returnable on 06/06/2018. Until the returnable date in this matter, the Appellate Court would be at liberty to take up application Exhibit 19 and decide the same on its own merits after considering the submissions of all the litigating sides. It is made clear that the said application is not to be taken up along with pending Civil Appeal at the final stage.

6. *Copies of the petition paper book shall be tendered for issuance of notice on/or before 10/04/2018, failing which this petition would stand dismissed without reference to the Court on 11/04/2018.”*

2. Learned counsel for the respondents has made an attempt to support the impugned order. Despite his efforts, I am unable to agree with his submissions, since the application for addition of parties will have to be dealt with before the appeal is decided since, if the appellate Court is convinced that the parties are required to be added, the proceedings will have to be halted and after addition of parties, the appellate Court will have to hear the added respondents and only then proceed to decide the appeal. Such a situation cannot be equated with the case of an application under Order XLI Rule 27 of the CPC.

3. In view of the above, this petition is allowed. The impugned order dated 5.3.2018 is quashed and set aside and application Exhibit 19 shall be heard expeditiously. Application Exhibit 23, therefore, is disposed off in the light of the order of this Court. Needless to state, the litigating sides would address the appellate Court on Exhibit 19 within a period of four weeks from today and the appellate Court shall decide the said application on its own merits expeditiously.

4. The learned Advocates for the respective sides pray that the Civil Appeal No.95 of 2002 may be expedited as it is pending for 16 years. As such, the learned appellate Court is directed to decide the said appeal as expeditiously as possible and preferably on/or before 28.2.2019.

(RAVINDRA V. GHUGE, J.)

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