

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

909 CIVIL APPLICATION NO. 12905 OF 2018
IN
SA/828/2018

BALUBHAI PRAGJI AND COMPANY NANDURBAR
AND ORS.

VERSUS

RADHABAI GOVINDSING PARDESHI LRS SARIYABAI
AND ORS.

.....

Mr. R.R.Mantri, Advocate for applicants.

Mr. S.V.Natu, Advocate for Respondent - Caveator.

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CORAM: VL.ACHLIYA, J.

DATE : 16/10/2018

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ORAL ORDER :

1. The applicant/appellant has moved this application to call record and proceedings of Civil Suit as well as appeal for hearing of Second Appeal which is kept for admission. Learned counsel for the applicant submits that for the purpose of admission of appeal, the record and proceedings of the Courts below are necessary.

2. On the other hand, learned counsel for the respondent opposed the application with contention that record and proceedings of the Courts below are not required for hearing the appeal on the limited point of admission. It is further submitted that interim order is operating against the respondents and the present application is filed to protract the hearing and continuation of interim relief.

3. Considering the submissions advanced, I am of the view calling of record and proceedings is not required at the stage of admission of second appeal. There are concurrent decisions rendered by the Courts below against which the appellant has filed second appeal. The appeal is kept for hearing on the point of admission to make out a case that substantial question of law involved in the appeal which requires consideration by this Court in the appeal. The interim order is operating in the matter. On the previous date, learned counsel for the respondent has opposed the application with contention that in view of the decision of the Apex Court in the case of ***Raghavendra Swamy Mutt Vs. Uttaradi Mutt reported in (2016) 11 SCC 235*** no interim order be granted unless case is made out to entertain the second appeal and substantial question of law is framed. I am, therefore, not inclined to entertain the application. In case after hearing the parties if Court finds it necessary to call record and proceedings, the Court may consider the said request on its own motion.

4. The application disposed of in above terms.

[VL.ACHLIYA]
JUDGE