

Mr. S. C. Naidu i/b. M/s. C. R. Naidu & Co. for Petitioner.
Mr. Tushar Sonawane for Respondents No.1 to 6.

P.C. :

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the order dated 22.06.2018 passed by the learned 7th Joint Civil Judge, Senior Division, Nashik below exhibit-49 in Regular Darkhast No.113 of 2010. By that order, the learned trial Judge allowed the application exhibit-49 filed by the respondents No.1 to 6-decree holders, subject to payment of costs of Rs.1,000/- to be deposited in District Legal Aid Fund. The learned trial Judge permitted the decree-holders to amend the plaint as also decree passed in R.C.S.No.66 of 2000.

3. Rule. Mr. Sonawane waives service for respondents No.1 to 6. Having regard to the narrow controversy raised in this Petition and at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. In support of this Petition, Mr. Naidu submitted that R.C.S.No.66 of 2000 was decreed by the trial Court on 29.09.2005. Aggrieved by that decision, judgment-debtors instituted Civil Appeal No.258 of 2005. The

appeal was heard on merits and came to be dismissed on 09.08.2010. The said decree was confirmed by this Court and the S.L.P. preferred by the judgment-debtor was disposed of by the Apex Court in the year 2011.

5. Mr. Naidu submits that as the decree passed by the trial Court was confirmed by the District Court on merits, the application exhibit-49 filed by the decree-holders could not have been entertained and tried by the learned trial Judge. In support of this proposition, he relied upon the following judgments:

- a. ***Hussain Sab Vs. Sitaram*, AIR 1953 Bombay 122;** and
- b. ***Sunil Vs. Shivprasad*, AIR 1985 Bombay 369.**

6. Mr. Sonawane does not dispute the fact that the decree passed by the trial Court was confirmed by the District Court on merits. In other words, appeal preferred by the judgment-debtors was not dismissed summarily under Order XLI, Rule 11 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'). In view thereof, he seeks permission to withdraw application exhibit-49 with liberty to file application before the District Court / Appellate Court.

7. In view thereof, application exhibit-49 stands withdrawn. Resultantly, the impugned order dated 22.06.2018 passed by the learned trial Judge stands dissolved with liberty to the decree-holders to file application before the District Court / Appellate Court. All contentions of the parties in that regard are expressly kept open. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)