

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

APPEAL AGAINST ORDER (AO) NO. 16/2017

Smt. Yamunabai @ Venubai Bapurao Bhongale & anr.

-vs-

Mohan @ Arun S/o Vitthalrao Dhote & anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri A.A. Choube, Adv h/f Shri A.K. Choube, Adv for the appellants
Shri P.J. Khumkar, Advocate for the respondent no. 1
Shri B.V. Chawhan, Advocate for the respondent no. 2

Coram: Z.A. HAQ, J.

Date : 06th MARCH, 2018

Heard.

This appeal is filed under Order XLIII Rule 1 (r) of the Code of Civil Procedure, 1908 to challenge the order passed by the District Court on the application filed by the respondents under Order XXXIX Rule 2 (a) of the Code of Civil Procedure, 1908, concluding that it is established that the present appellants have wilfully committed breach of the undertaking given by them to the Court and have wilfully disobeyed the order of status-quo passed by the District Court.

The respondents had filed S.C.S. No. 1059/1994 against the present appellants, which is

decreed. The present appellants have challenged the judgment and decree passed by the trial Court in appeal before the District Court. In this appeal, the respondents had filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 seeking an order against the present appellants restraining them from creating any third party rights, title or interest in the suit property. The District Court passed an order on 28/09/2005 directing the parties to maintain status-quo, then *pursis* was filed by the present appellants on 07/10/2005 undertaking that they will not enter into agreement of sale or will not make any transaction till disposal of the case. During operation of the order of status-quo and inspite of the above undertaking, the present appellants executed the sale-deed in respect of the suit property on 07/11/2006. In these facts, the present respondents filed the application under Order XXXIX Rule 2 (a) of the Code of Civil Procedure, 1908.

It is not disputed that the undertaking is placed on record of the appeal by the advocate who represented the present appellants. The *pursis* is signed by the appellant no. 2 in Marathi and undisputedly, has thumb impression of the appellant no. 1. The defence of the appellants is that they are illiterate and therefore, could not understand the effect of filing such *pursis*.

After going through the impugned order, I find that the learned trial Judge has properly appreciated the factual aspects. The spacious defence raised on behalf of the appellants cannot be accepted and the learned trial Judge has rightly repelled the defence of the appellants.

The impugned order is proper and does not require any interference by this Court in the extra-ordinary jurisdiction.

The appeal is dismissed. In the circumstances, the parties to bear their own costs.

The learned District Judge to proceed further with the matter.

The appellants and the respondents shall appear before the learned District Judge-10, Nagpur on 09/04/2018 at 11:00 a.m.

JUDGE

Ansari