

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

C.A.S. NO.874/2015 IN SECOND APPEAL NO. 212/2013

(GAJANAN KRISHNAJI NANDURKAR VERSUS SHAMRAO KRISHNAJI NANDURKAR & OTHERS)

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

Court's or Judge's orders

Shri R.R. Vyas, counsel for the appellant/non-applicant.
Shri D.L. Dharmadhikari, counsel for the R-15/applicant.

CORAM : A.S. CHANDURKAR, J.

DATE : JULY 27, 2018.

By this application, it is prayed that the appeal be dismissed under provisions of Order XXXIX Rule 11 of the Code of Civil Procedure, 1908 on the ground that the appellant has in breach of the order of *status quo* undertaken construction of a permanent nature.

In the application, it is stated that on 08.10.2013, this Court had directed the parties to maintain *status quo* as of that date during pendency of the appeal. However in the year 2014 and 2015, the appellant has undertaken construction of a permanent nature. In support of the application, notices issued to the appellant as well as photographs are placed on record. It is also submitted that the paper book as was directed to be filed has still not been filed.

Reply has been filed on behalf of the appellant in which it has been stated that since his family consists of his son, daughter-in-law and grandchildren, it was difficult for them to use the government latrine and therefore that temporary construction was undertaken.

After hearing the learned counsel for the parties and after perusing the documents on record, it is apparent that the appellant has undertaken construction despite the fact that the order of *status quo* was in operation. The suit in question has been filed for declaration that the plaintiff is the exclusive owner of plot no.100/1 which is presently in the occupation of the appellant herein.

Considering the nature of construction undertaken, though it is *prima-facie* clear that the said construction has been undertaken in breach of the order of *status quo*, at this stage I am not inclined to dismiss the appeal on that count. In stead the appellant is directed to deposit an amount of Rs.15,000/- (Rupees Fifteen Thousand) in this Court within a period of three weeks from today. This amount would be towards costs for violating the order of *status quo*. The aspect with regard to willful breach of order of *status quo* would be a factor which would be considered by the Court while deciding the appeal. Similarly, the paper book be filed within a period of one week. If the aforesaid directions are not complied with, the appeal shall stand dismissed without further reference to Court.

The civil application is disposed of in the aforesaid terms.

SECOND APPEAL NO.212/2013.

In view of order dated 08.10.2013, the appeal is directed to be listed for hearing in the week commencing 03.09.2018.

JUDGE