

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Civil Application Nos. 1138 and 1287 both of 2017

IN
Second Appeal No.463 of 2017
[Smt. Kesar Pralhad Pali & another Vs. Ramesh Chaitram Neware]

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

Court's or Judge's orders

Civil Application No. 1138 of 2017 :

Mr. P. S. Sadawarte, Adv., for applicant – respondent.

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Civil Application No. 1287 of 2017 :

Mr. Masood Shareef, Adv., for the applicant – appellants.

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CORAM : A. S. CHANDURKAR, J.

DATE : 09th February, 2018

Civil Application No. 1138 of 2017 has been filed for dismissal of the appeal on the ground that in the Second Appeal the judgment and decree passed in Regular Civil Appeal No. 386 of 2011 dated 1st March, 2017 has been challenged. According to the applicant in that Civil Application, after the decree was passed, an application was moved by them on 29th March, 2017 under Section 152 of the Code of Civil Procedure, 1908 [for short, “the Code”] for modification of the decree. This application was contested by the present appellants and on 3rd May, 2017, the decree came to be modified. Despite this fact, the present Second Appeal has been

filed on 6th June, 2017 challenging the original decree dated 1st March, 2017. It is, thus, stated that the Second Appeal deserves to be dismissed as the decree dated 1st March, 2017 is not in existence.

This application is opposed by filing reply and stating that the aforesaid has occurred on account of inadvertent mistake as a different counsel had appeared in the proceedings under Section 152 of the Code of Civil Procedure, 1908. In addition, Civil Application No. 1287 of 2017 has been filed praying that the Memorandum of Second Appeal be permitted to be amended so as to challenge the modified decree. This application for amendment is opposed by the non-applicant on the ground that a fresh appeal deserves to be filed for challenging the modified decree.

After hearing respective counsel, I do not find that there are any mala fides on the part of the appellants in challenging the decree dated 1st March, 2017. The reason given for the inadvertent mistake appears to be acceptable. Hence, the following order is passed:-

Civil Application No. 1287 of 2017 is allowed. The appellants are permitted to amend the Memorandum of Appeal as prayed, within a period of two weeks from today. The amended copies be served on the counsel for the respondent. Civil Application is

disposed.

In view order passed on Civil Application No. 1287 of 2017, Civil Application No. 1138 of 2017 stands rejected.

Judge

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