

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

SECOND APPEAL NO.3 OF 2017

Dr Shakil Ali s/o Yusuf Ali Mirsaheb and anr.

-vs-

Sudhakar s/o Madhukar Kawalkar

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

Court's or Judge's Orders.

Shri A. J. Thakkar, Advocate for appellants.

CORAM : A.S.CHANDURKAR, J.

DATE : February 05, 2018

Despite service, the original plaintiff has not appeared.

Heard.

Admit on the following substantial question of law :

“ Whether the appellate Court could have passed the conditional decree that the excess construction be demolished only after measuring the same which in terms implies that such measurement was not carried out earlier? ”

Call for record and proceedings.

Civil Application (CAS) No.1484/2017

By this application it is prayed that the decree passed by the first appellate Court be stayed during pendency of the appeal.

The non-applicant was duly served with this application.

Perusal of the decree passed by the first appellate Court indicates that prior to removal of encroachment through demolition, the property in possession of the applicant was to be first measured. Considering the nature of decree as passed and as the second appeal has been admitted, execution of further proceedings in Regular Darkhast No.7/2017 shall remain stayed during pendency of the appeal.

Civil Application is disposed of.

JUDGE