

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Civil Application No. 02301 of 2019
(In Second Appeal No. 0263 of 2016)

District : Jalgaon

Kavita Nivrutti Shinde,
Age : 39 years,
Occupation : Agriculture &
Household,
R/o. Old Malegaon Road,
Chaudhari Lane,
Near Railway Station,
Chalisgaon,
Dist. Jalgaon.

.. Applicant
(Original
appellant)

versus

1. Suresh s/o. Ambar Khedkar,
Age : 56 years,
Occupation : Business.

2. Sau. Shalini w/o. Suresh
Khedkar,
Age : 49 years,
Occupation : Household.

Both R/o. Shiv Colony,
Old Malegaon Road,
Chalisgaon,
Dist. Jalgaon.

3. Sau. Sunita w/o. Kailas Dethe,
Age : 47 years,
Occupation : Household,
R/o. Shivajinagar,
Near Hanuman Temple,
Pachora, Taluka Pachora,
Dist. Jalgaon.

4. Sau. Nalu Mohan Kadam,
Age : 37 years,
Occupation : Household,
R/o. Shiv Colony,
Old Malegaon Road,
Chalisgaon, Dist. Jalgaon.

.. Respondents

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Mr. R.R. Mantri, Advocate, for the applicant.

Mr. G.V. Wani, Advocate, for respondents no.01 and 02.

Mr. R.R. Kakani, Advocate, for respondents no.03 & 04.

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CORAM : SMT. VIBHA KANKANWADI, J.

**Date of reserving
the order : 06th March 2019.**

**Date of pronouncing
the order : 24th April 2019.**

ORDER :

01. Present application has been filed by the original appellant for directing prosecution of respondents no.01 and 02 for perjury, take *suo motu* action of contempt against them.

02. The second appeal has been filed by the applicant challenging the judgment and decree passed by learned Ad hoc District Judge-2, Jalgaon, who has reversed the judgment and decree passed by the trial Court. The appeal is waiting for its admission and other relief. The appeal was got circulated on 19-12-2018 for admission in view of the urgency that

respondents no.01 and 02, sometime in 2018 had filed Regular Darkhast No.28 of 2018, before Civil Judge (Junior Division), Chalisgaon. Show cause notice was issued. But then when the matter was on board and the fact was pointed out, a statement was made on behalf of respondents no.01 and 02, that no execution proceedings has been filed by them. The said statement was recorded by this Court. It is stated that though copy of the notice was received by the applicant, a wilful false statement was made before this Court. According to the applicant, it amounts to perjury apart from contempt and hence, the application. (Parties are referred as per their nomenclature before the trial Court.)

03. Say has been filed by respondents no.01 and 02, in the form of affidavit in reply. It is stated that on the instructions of respondents no.01 and 02, a statement was made that the execution proceedings has not been filed. However, it is stated that it was because of the misunderstanding on the part of respondent no.01. It is stated that, in fact, the appellate authority had granted an injunction in his favour and restrained present applicant and other co-respondents from interfering with the possession of respondent no.01. Since he was obstructed while cultivating the suit land, he had approached his Advocate at Chalisgaon who had then advised to file proceedings in the nature of contempt. Therefore,

Regular Darkhast No. 28 of 2018 was filed by him. He was under the impression that the contempt proceedings is filed and not execution proceedings. Therefore, without consulting his Advocate from Chalisgaon, he gave instructions to his Advocate at Aurangabad, that no execution proceedings has been filed. He has tendered unconditional apology and has given an undertaking that he will not proceed with the further proceedings under Regular Darkhast No.28 of 2018.

04. Heard both sides. Learned Advocate appearing for the applicant - appellant, apart from the contents of the application, relied on the decision in *Afzal & another Vs. State of Haryana & others* [(1996) 7 SCC 397] wherein it was held that "*Deliberately and wilfully making a false or a misleading or a wrong statement by a party to the proceedings to obtain a favourable order would amount to 'criminal contempt'.*"

05. Per contra, learned Advocate appearing for respondents no.01 and 02 submitted that since there was misunderstanding to respondents no.01 and 02, in contempt proceedings or execution proceedings, the instructions were given and, therefore, that statement was made. Since it was unintentional and now undertaking is given that the respondents no.01 and 02 will not proceed with the Regular Darkhast proceedings, action is not required.

06. It is to be noted that the second appeal has been filed by original plaintiff who had filed suit for declaration and perpetual injunction before Civil Judge (Junior Division), Chalisgaon. The suit came to be partly decreed. Defendants no.01 and 02 were restrained from obstructing possession of the plaintiff over the suit property; relief of declaration was also given. The counter claim filed by defendants no.01 and 02 was dismissed.

07. The said judgment and decree was challenged by original defendants no.01 and 02 by filing Regular Civil Appeal No. 198 of 2015. It was heard by learned Ad hoc District Judge-2, Jalgaon. The said appeal came to be allowed on 10-02-2016. The suit was dismissed but the counter claim of the defendants was partly allowed. The plaintiff and defendants no.03 & 04 in R.C.S. No. 90 of 2012 were restrained permanently by order of injunction from causing obstruction to the possession of defendants no.01 and 02. Hence, the original plaintiff has filed Second Appeal No. 263 of 2016. It is still waiting for its turn for admission. Civil Application No. 04531 of 2016 was filed for stay. However, no order was passed specifically granting any interim stay to the judgment and decree passed by the learned first appellate Court. But then, when the matter was on board on on 19-12-2018, a statement was made on

behalf of respondents no.01 and 02, by the learned Advocate, that the respondents no.01 and 02 have not filed any execution proceedings.

08. Now, in this application, the applicant has come with a case that she had received copy of the notice in Regular Darkhast No.28 of 2018, of which, scheduled date was 29-11-2018. It appears from the order that was passed by this Court on 19-12-2018, that photo-copy of the notice received by present applicant was not made available to this Court and only statement of the learned Advocate for respondents no.01 and 02 was recorded. It is observed that only a statement has been made that his client has not filed any execution proceedings. This *per se* will not amount to false statement though it may amount to incorrect statement. The applicant could not have only relied on that statement, if she had every knowledge about filing of Regular Darkhast No.28 of 2018 before the learned trial Court. Though on that day, learned Advocate for the appellant was present, he did not make a statement that the learned Advocate for respondents no.01 and 02 is making an incorrect statement. Therefore, now the applicant cannot take advantage of any statement made by the learned Advocate for respondents no.01 and 02.

09. Further, it appears from the affidavit in reply, that there was a misunderstanding for

respondent no.01. He took the said proceedings i.e. Regular Darkhast No.28 of 2018 as an action for contempt initiated against the present applicant when it was found by him, that in spite of the decree passed by the first appellate Court, the plaintiff was obstructing him from cultivating the land. He was under misconception that it was not an execution proceedings and, therefore, under that circumstance, it appears that he made that statement to his Advocate, who in turn, made that statement before this Court.

10. The ratio laid down in *Afzal's case (supra)* will not give any advantage to the applicant because here in this case, it cannot be stated that the said statement made on behalf of respondents no.01 and 02 was deliberate or wilful. Application for stay is pending since 1916 and there was no hurry for applicant to seek relief of stay till then and then, all of a sudden, it appears that the matter was got circulated, as per the say of the applicant. Even at the time of getting circulation, the applicant could have produced photo-copy of the notice received by her. If that notice would have been pointed out, there would have been some clarification got by this Court and it would have been reflected in the order dated 19-12-2018. Under such circumstance, since the statement does not appear to be made deliberately or wilfully, it does not call for any action for perjury

or even taking action for contempt. Further, as regards stay to the further proceedings in Regular Darkhast No.28 of 2018 is concerned, now undertaking has been given in the say i.e. affidavit in reply filed by respondents no.01 and 02, that they will not proceed with the proceedings before the executing Court till a specific permission is taken. There need not be any specific order to that effect. Further, the application for stay to the judgment and decree is still pending.

11. In the light of above, present civil application is disposed of '**as rejected**'.

(Smt. Vibha Kankanwadi)
JUDGE

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