

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

914 APPEAL FROM ORDER NO.59 OF 2019
WITH CA/13867/2019 IN AO/59/2019

DWARKABAI UTTAMRAO TAMBE (DECEASED) AND OTHER
VERSUS
SHANTABAI MACHHINDRA PAWAR AND OTHER

.....
Advocate for Petitioners : Mr. Deshpande Milind K.
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CORAM : V. K. JADHAV, J.
DATED : 28th NOVEMBER, 2019

PER COURT:-

1. I find no substance in this appeal from order.
2. The appellants are the original plaintiffs and they had instituted a suit to re-execute the mortgage deed, redemption and separate possession and perpetual injunction. Though the respondents-original defendants served with suit summons and though they put their appearance in the suit, no written statement was filed in time and the suit ordered to proceed without their written statement. Learned Civil Judge, Junior Division, Paithan, by judgment and decree dated 17.07.2013 decreed the suit exparte with costs.
3. Being aggrieved by the said order passed by the trial court, the respondents-original defendants had preferred an appeal alongwith an application for condonation of delay. The said application came to be allowed and after hearing the appeal, learned 11th District Judge, Aurangabad, by judgment and order dated 19.10.2019 allowed the

appeal, set aside the judgment and decree passed by the trial court and remanded the matter to the trial court to decide the matter afresh by giving opportunity to both sides to lead their evidence, if any. The first appellate court has also directed respondents-defendants to file their written statement in the suit on 07.12.2019 and pay costs of Rs.3000/- for accepting their written statement. It is also stated in the order that if they fail to comply the same, their right to file written statement will be automatically stand forfeited. The parties are directed to appear before the trial court on 06.12.2019 and the trial court was directed to dispose of the suit within nine months from 06.12.2019. Hence, this appeal from order.

4. Learned counsel for the appellants submits that the judgment and order passed by the learned District Judge-11, Aurangabad in the appeal is against the provisions of law and it is cryptic order. During execution proceeding, the sale deed came to be executed in respect of the suit land. As such, the decree passed by the trial court have been complied with. Learned counsel submits that it is necessary to quash and set aside the remand order and the judgment and decree passed by the trial court needs to be confirmed.

5. However, after going through the judgment and decree passed by the trial court, it appears that the learned Judge of the trial court has decided the suit exparte and even though the matter pertains to immovable property in 3/4 paragraphs only without discussing any

evidence and giving reference to the documents placed on record, the learned Judge has decreed the suit. Though there was considerable delay occurred in preferring the appeal, however, the learned District Judge has condoned the delay and in the appeal remanded the matter to the trial court with certain conditions. After going through the said order, I find that the learned Judge has considered each and every aspect and considering that the dispute pertains to immovable property, remanded the matter with specific direction to the trial court to dispose of the suit within nine months from the date of appearance of the parties. Furthermore, certain date is also fixed for filing written statement and in case if written statement is not filed on or before the said date, the right to file written statement of the respondents-defendants would stand automatically forfeited. Thus, there is no reason to entertain this appeal from order. Hence, I proceed to pass the following order:-

O R D E R

- I. The appeal from order is hereby dismissed.
- II. In view of dismissal of appeal from order, nothing survives for consideration in civil application No. 13867 of 2019 and the same is accordingly disposed of.

(V. K. JADHAV, J.)

rlj/