

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5673 OF 2019

Bhau Sakharam Dabade

Since deceased by Lrs.

1(1) Natha Bhau Dabade and ors.

.. Petitioners

Vs.

Hajarat Peer Shamanamirso Darga Miraj and ors. .. Respondents

Mr. Tejpal Ingale, for the Petitioners.

CORAM : M.S.KARNIK, J.

DATE : 06th SEPTEMBER 2019

P.C. :

Heard learned Counsel for the petitioners.

2. Learned Counsel for the petitioners seeks leave to delete respondents No. 2, 3, 4 & 6. Amendment to be carried out forthwith.

3. The contesting respondents are served. Affidavit of service to that effect has been filed. None appears for the

respondents. Having served the contesting respondents, office objections are dispensed with.

4. The petitioners by this Petition are challenging the order dated 02/03/2019 passed below Exhibits 147 and 150. The trial Court rejected the said applications. The said applications are filed by the original defendants – petitioners for staying the Suit. The respondents – original plaintiffs had filed Regular Civil Suit No. 274 of 1985 for possession and future mesne profit. The lands are in possession of the petitioner – original defendant No.1 as a tenant. The Suit came to be decreed by the trial Court on 21/09/1990.

5. The petitioner – original defendant No.1 filed Regular Civil Appeal No. 497 of 1990 before First Appellate Court. By judgment and decree dated 08/04/1999, the Appeal filed by defendant No.1 came to be allowed. The order dated 08/04/1999 reads as under :

“The order and decree of possession passed by the court below is set aside and the record and

proceeding is remanded back to lower court with direction that the suit should be taken up for hearing after proceeding u/s 88B of the B.T.&A.L. Act are disposed by S.D.O, Miraj.

Parties to bear their own costs of this appeal.

Decree be drawn accordingly.”

6. Pursuant to the remand, the S.D.O., Miraj passed order granting certificate under Section 88B in favour of plaintiff – Trust.

7. The petitioners therefore challenged the order passed by the S.D.O., Miraj. Presently the matter is with the Maharashtra Revenue Tribunal Camp Kolhapur (for short M.R.T.Camp, Kolhapur). Execution and operation of the impugned order passed by S.D.O., Miraj on 14/09/2016 in Tenancy Appeal No. 888/1/2013 is stayed till 08/02/2019.

8. The petitioners therefore filed applications below Exhibits No. 147 & 150 pointing out that in view of proceedings which are pending before M.R.T. Camp Kolhapur, Suit should be

stayed till final order of M.R.T. Camp Kolhapur. By impugned order dated 02/03/2019, applications - Exhibits 147 & 150 came to be rejected.

9. Learned Counsel for the petitioners pointed out that the trial Court has misread the order passed by the Appellate Court and recorded that the direction of the Appellate Court is restricted to hearing of the Suit till the proceedings before S.D.O. Miraj are disposed of. Though the order passed by S.D.O.Miraj is stayed by M.R.T. Camp Kolhapur, the trial Court in view of directions of the Appellate Court rejected the application for stay of the Suit.

10. None appears for the contesting respondents though they are duly served. In my opinion, the trial Court committed an error in rejecting the applications for staying the Suit. The order passed by the First Appellate Court while remanding the matter to the trial Court is very specific. The First Appellate Court has issued the direction that Suit should be taken up for

hearing after proceeding under Section 88B of the B.T.& A.L. Act are disposed of by S.D.O., Miraj. Though S.D.O. Miraj has granted certificate under Section 88B, the petitioners have challenged the said certificate by invoking statutory remedy available under B.T.& A.L. Act and as a matter of fact, M.R.T. Camp Kolhapur has stayed the certificate issued under Section 88B. In my opinion, the trial Court could not have given such a restrictive and literal meaning to the order passed by the First Appellate Court. In view of the pendency of proceeding before M.R.T. Camp Kolhapur, applications below Exhibits 147 & 150 deserve to be allowed. Present Petition succeeds and is accordingly allowed. Applications Exhibits 147 & 150 are allowed.

(M.S.KARNIK, J.)