

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.342 OF 2019

Mohan Munsihram Ahuja & Ors. ..Applicants.
V/s.
Hemant Dhanaji Vidhate ..Respondent.

Mr.Milind M.Sathaye for the applicants.

Mr.Tushar N.Sonwane for respondent.

Sole respondent present.

CORAM : NITIN W. SAMBRE, J.

DATE : OCTOBER 7, 2019

P.C. :-

In the light of Order 23 Rule 3A of the Code of Civil Procedure ('the CPC' for short), the parties to the present revision are in agreement that the suit initiated by the respondent-plaintiff on the file of Civil Judge, Senior Division, Nashik seeking setting aside the order passed in Special Civil Suit No.264/2008 thereby disposing of the suit as compromised, be relegated to the Court of 2nd Joint Civil Judge, Senior Division, Nashik for setting aside the compromise and recording evidence, under order 23 Rule 3A of the CPC.

2. We expect the said Court to decide the application

referred above in the light of the judgment of the Apex Court in *Horil V/s. Keshav and Another*¹ particularly paragraph 9, which reads thus :-

“9. It is true that a compromise forming the basis of the decree can only be questioned before the same court that recorded the compromise and a fresh suit for setting aside a compromise decree is expressly barred under Order 23 Rule 3-A. It is equally true the expression "not lawful" used in Order 23 Rule 3-A also covers a decree based on a fraudulent compromise hence, a challenge to a compromise decree on the ground that it was obtained by fraudulent means would also fall under the provisions of Order 23 Rule 3-A.”

3. As such, the revision stands disposed of in the above terms.
4. Needless to clarify that the Court has not examined the merits of the contentions raised in the aforesaid application.
5. The respondent is personally present in Court.

(NITIN W. SAMBRE, J.)

¹ (2012) 5 Supreme Court Cases 525