

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

MIS.CIVIL APPLICATION NO.258 OF 2018

Vasant Govindrao Wagh ... Applicant
Vs
Gangadhar Damodar Burkule ... Respondent
...
Mr. M.M.Sathaye for the Applicant.
Mr. R.D.Soni i/by Ram & Co. for the Respondent Nos.2 and 3.

CORAM : SANDEEP K. SHINDE J.
DATE : APRIL 9, 2019

P.C. :

Heard learned counsel for the parties.

2 It is an application under Section 24 of the Code of Civil Procedure, 1908 whereby applicant is seeking transfer of the Civil Appeal No.60 of 2018 from the Nashik District Court to this Court.

3 It appears inadvertently appeal was presented in the District Court at Nashik instead, presenting the same in this Court as the appeal was valued for exceeding Rs.1 Crore.

4 It is submitted that the applicant has filed an application in the District Court at Nashik on 12th July, 2018 seeking suitable order of transfer of the appeal and it is pending.

5 In my view, appropriate remedy, is to withdraw the Civil Appeal No.60 of 2018 with a leave to present the same before the Court of competent jurisdiction. Mr. Sathaye the learned counsel for the applicant would submit, on presenting appeal afresh, before this Court the applicant may have to apply for condonation of delay. He would further submit that substantial Court-fee has been paid by the applicant in Regular Civil Appeal in the District Court at Nashik and his client may have to pay Court-fees immediately and wait for the refund of the Court-fees which he has already paid.

6 That so far as the delay aspect is concerned, in my view, appropriate Court where the appeal would be presented may take recourse to the provisions of Section 14 of the Limitation Act, 1963.

7 That so far as Court-fees is concerned, Mr. Sathaye submits that Court-fee already paid in the District Court may be directed to be adjusted against court-fees payable in appeal to be filed in this Court. In my view, administrative orders can be best left to the learned District Judge if maintainable. That even otherwise, applicant can apply for refund of court-fees and if such an

application is made, learned Judge shall ensure that the court-fees is refunded to the applicant expeditiously.

8 With the aforesaid observations, in my view, since alternate remedy is available to the applicant, I am not inclined to exercise jurisdiction under Section 24 of the Code of Civil Procedure, 1908.

9 Mr. Sathaye has pointed out that pending Appeal No.60 of 2018, respondent is restrained from creating third party rights in the suit property vide order dated 27th April, 2018. In the peculiar facts of the case, this interim protection granted shall continue to operate for a period of three months within which applicant shall take appropriate steps and pursue his remedy.

(SANDEEP K. SHINDE, J.)