

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO.583/2017

WITH

SECOND APPEAL NO.584/2017

Vasant S/o. Pomaji Deoghare & Anr.

..VS..

Sau. Smita W/o. Arun Kashikar & Oth.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Saurabh Choudhari, Advocate for the appellants
Shri P. S. Sadawarte, Advocate for respondent No.1

CORAM : V. M. DESHPANDE, J.

DATED : 12/07/2019

These two appeals are heard together and simultaneously and they are decided by this common order.

2] One Pramilabai Kashikar filed a Special Civil Suit No.87 of 1997 for recovery of rent alongwith municipal taxes totaling Rs.7,26,000/- primarily against defendant No.2 therein i.e. Shetkari Shikshan Prasarak Mandal Karmachari Career Society represented through its President V. P. Deoghare and D. V. Mahajan as President and Secretary. These two persons are the appellants in these two appeals before this Court. Special Civil Suit No. 87 of 1997 was decreed in part by learned Civil Judge Senior Division Wardha on 31/01/2004.

3] The defendants therein chose not to prefer

any appeal and consequently, it attains finality.

4] By passage of time, original plaintiff-Pramilabai Kashikar expired and her legal representative Smt Smita Kashikar's name was substituted in her place. Decree in Special Civil Suit No. 87 of 1997 was put for its execution and the proceedings were registered as Special Darkhast No. 30 of 2004. The notices of the execution proceedings were served upon the present appellants. After the receipt of execution proceedings, present appellants filed Regular Civil Suit No.118 of 2008 in the Court of Civil Judge Senior Division, Wardha seeking declaration that decree obtained in Special Civil Suit No. 87 of 1997 be declared as not binding on them, in as much as the said decree was obtained by practicing fraud upon the Court.

5] In the meanwhile, these two appellants also filed objection under Section 47 of Code of Civil Procedure, 1908 in Special Darkhast No. 30 of 2004 resisting the decree on the ground that the decree cannot be executed, since the said is obtained by practicing fraud.

6] The suit as well as the objections were resisted by the decree holder of Special Civil Suit No. 87 of 1997. Since both the suits as well as the execution proceedings were pending in the Court of learned 4th Jt. Civil Judge Senior Division Wardha, he decided the suit as well as

the objections raised by the appellants by a common judgment dated 06/06/2011, thereby dismissing the suit as well as overruling and rejecting the objections. The appellants herein thereby filed the Regular Civil Appeal No.3 of 2012 challenging the judgment and decree of dismissal of their suits whereas they filed Regular Civil Appeal No. 4 of 2012 under Order 41 Rule 1 of the Code of Civil Procedure, 1908 challenging the rejection of their objections to the executability of the decree.

7] Learned Principal District Judge, Wardha by a common judgment dated 02/02/2017 dismissed both the appeals. Hence, these two consequent appeals were filed before this Court.

8] I have heard Shri Saurabh Chaudhari learned counsel for the appellants and Shri P. S. Sadawarte learned counsel for the original plaintiff/respondent No.1.

9] When a suit is filed seeking declaration that decree obtained in suit proceedings is an outcome of fraud practice upon Court, as well as when decree obtained in a suit when put for its execution is resisted on the ground that the decree cannot be executed since the decree is obtained by practicing fraud upon Court, in my view, it is very serious issue. A very heavy burden lies on the shoulder of a person who claims that a decree is obtained by practicing fraud on the Court. The

pleading in such suit and the objections should be very precise and should spelt out clearly as to how the fraud is practiced upon the Court. General allegations in respect of fraud, in my view, is impermissible. Similarly, a very strict degree of proof is required to prove that the fraud is practiced upon the Court.

10] It appears that both the Courts below has kept this principal in their mind while deciding the suit as well as the objections. In Special Civil Suit No. 87 of 1997, the present appellants were parties. The summons of that suit was duly served upon them. They chose not to appear before the Court. Consequently, a decree was passed. In the execution proceedings as well as in the suit it was their contention that at the relevant time they were not President and the Secretary. However, both the Courts below found that the said fact they could not prove clinchingly. It was also their case before the Courts below that, though the plaintiff in Special Civil Suit No. 87 of 1997 has already received Rs.89,000/-, still the suit was filed without deducting the said amount. However, nothing can be brought on record to show that the statement of the plaintiff in Special Civil Suit No. 87 of 97 was factually incorrect in respect of claiming the arrears of rent.

11] Both the Courts below on appreciation of factual data placed before them found that the contention of the present appellants that the decree in

Special Civil Suit No. 87 of 1997 was obtained by fraud was devoid of any substance. In my view also, the said findings are required to be maintained. Consequently, both these appeals do not involve any substantial question of law. On submission on behalf of the learned counsel for the appellants that the decree cannot be executed in respect of their personal property, it is always open for them to take appropriate steps in law for that.

Both appeals are dismissed.

JUDGE

Namrata