

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

Civil Application [CAA] No.58 of 2019
in
Appeal Against Order No.9 of 2019

Branch Manager, Nishant Multi State Co-op. Credit Society Limited, Akola & Another
vs.

Devanand Ramrao Pethkar, through L.Rs. & Others

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*Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.*

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Court's or Judge's Orders

Shri J.B. Gandhi, Advocate for the Applicants/Appellants.

CORAM : S.M. MODAK, J.
DATE : 19th NOVEMBER, 2019.

The present appellants were impleaded in Special Civil Suit No.246/2011 by way of amendment. They are defendant Nos.3 & 4. The suit in original form was for specific performance of the agreement in between the plaintiff as prospective purchaser against defendant Nos.1 & 2 being the vendors.

Defendant Nos.1 & 2 have mortgaged the suit property in favour of defendant Nos.3 & 4 and by way of amendment, the plaintiff wants to challenge it. After the appearance, defendant Nos.3 & 4/present appellants objected to the maintainability of the suit by filing an application under Order 7 Rule 1 of the Code of Civil Procedure. It was due to non-issuance of a notice under Section 164 of the Maharashtra Co-Operative Societies Act, 1960.

4th Joint Civil Judge, Senior Division, Akola felt it proper to consider the said request against all the defendants. He passed an order dated

22/11/2017 thereby the plaint was rejected. When the original plaintiffs filed R.C.A. No.107/2017, the learned District Judge-III, Akola set aside the said order and ordered for restoration of the suit. It is this order, which is challenged originally by way of writ petition. The writ petition is converted into Appeal From Order as permitted by this Court on 05/02/2019.

Respondent Nos.1[A] & 1[B] have filed the caveat application. They were present when this Court passed an order dated 05/02/2019.

Issue notice before admission to the respondents, returnable after two weeks.

Civil Application [CAA] No.59/2019 :

Respondent Nos.1[A] & 1[B] have filed the caveat application. They were present when Writ Petition No.832/2019 was heard on 05/02/2019. It is true that they are not aware about today's date. But, I think the impugned order can be stayed, so far as the present appellants are concerned. It cannot be stayed in its entirety. Hence, the following order :

- [I] Insofar as the present appellants/ defendant Nos.3 & 4 are concerned, stay is granted to the order dated 15/10/2018 passed by the District Judge-III, Akola in R.C.A. No.107/2017 till appearance of the present respondents.
- [ii] The trial Court is at liberty to proceed against defendant Nos.1 & 2.
- [iii] Stand over after two weeks.

Civil Application [CAA] No.60/2019 :

Though not originally, but subsequently the appellants have filed certified copy of the impugned order.

Hence, the application is disposed of.

JUDGE

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