

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

CIVIL APPLICATION (CAA) NO. 44 OF 2019

in

APPEAL AGAINST ORDER (AO) NO. 26 OF 2019

[Subhash s/o Kundlik Musale and anr. Vs. Bainabai s/o Banshiram Ingole and anr.]

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S. V. Sohoni, Advocate for the appellants

CORAM : M. G. GIRATKAR, J.

DATE : 24/07/2019

Heard learned Advocate Shri Sohoni for the appellants. He has pointed out the judgment of Ad-hoc District Judge – 1, Washim in Regular Civil Appeal No. 90 of 2014. He has submitted that suit was rightly dismissed by the trial Court. Without going into merit, the Appellate Court allowed the appeal and remanded the matter. Learned Advocate has relied on the judgment in the case of **Rampyare Ram Hiranman Prasad Vs. Usha Prasad, 2018(1) ALL MR 170** and submitted that in view of this judgment impugned judgment is liable to be stayed.

From the perusal of the judgment of trial Court, it appears that respondent had filed civil suit for cancellation of Sale Deed alleging that husband of plaintiff

no. 1 addicted to liquor and sold the property without any legal necessity.

From the perusal of the judgment, it is clear that the plaintiff adduced her evidence. She was cross-examined by the appellant's side. But, thereafter, the matter was adjourned from time to time.

It is observed in para 16 of the judgment of the Appellate Court that matter get adjourned many times mainly on the ground of business of Presiding Officer in other work and sometimes due to the absence of plaintiff and his advocate. Itself shows that respondents are not only responsible for the pendency of the matter. These observations itself show that the Presiding Officer who was busy in other matters, therefore, Court is also equally responsible. Thereafter, plaintiffs/respondents could not appear before the Court and Judgment was passed by the Trial Court after verifying all the evidence and record. The learned Appellate Court come to the conclusion that opportunity needs to be given to the plaintiff to adduce the evidence and, thereafter, trial Court to decide the matter.

In the judgment of **Rampyare Ram** (cited supra), it is observed by this Court that without going into the merits, the Court cannot remand the matter.

It appears from the impugned judgment that District Court has gone into the merit and verified the record. After verifying the record, the District Court come to the conclusion that the plaintiffs/respondents are not only responsible but other factors are also responsible for the pendency of the matter. Hence, cited decision is not applicable to the case in hand.

Hence, the application for stay is rejected.

Call R & P.

Issue notice to the respondents returnable after four weeks.

JUDGE

SMGate