

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

CIVIL APPLICATION (CAO) NO.265 OF 2020
IN
CIVIL APPLICATION (CAF) STAMP NO.2770 OF 2020
IN
FIRST APPEAL NO.1648 OF 2019 (D)

Ideal Education Society, through its Secretary, Mahesh S/o Dnyandeo Tawale.

Vs.

Indrakumar s/o Dajiba Nagdevate and another.

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

Court's or Judge's orders

Mr. Nirin Jachak, Advocate for applicant.
Mr. A. P. Thakare, Advocate h/f Mr. J. M. Shamkuwar,
Advocate for respondent no.1.
Mrs. M. A. Barabde, AGP for respondent no.2.

CORAM : AVINASH G. GHAROTE, J.

DATE : MARCH 02, 2020.

I have heard Mr. Thakre, learned counsel for the respondent no.1 – original appellant.

By an order dated 7th of February, 2020, the notice was issued, on the limited question as to maintainability of the first appeal under the provisions of Sub-section 5 of Sec. 47.

Today, Mr. Thakre, learned counsel appearing for the respondent no.1, concedes to the fact that considering the nature of the order passed dated 28 February, 2019, which was put in challenge in First Appeal No.1648 of 2019, the same is not susceptible to challenge in a first appeal under section 47(5) of the Maharashtra Public Trust Act, as Section 45 (5) provides for an appeal to the Court against the order of

the Charity Commissioner under Section 47(2). The impugned order, is admittedly as conceded by the learned counsel for the respondent no.1 – original appellant is one passed rejecting an application under section 47(1), and therefore, is not an order as contemplated by the provisions of Sub-section 47(2), due to which an appeal under under Section 47(5) does not lie.

In that light of the matter, the First Appeal bearing No.1648 of 2019, itself not being maintainable, the judgment dated 09.01.2020, is clearly one which is passed, in absence of jurisdiction, in light of which, the judgment dated 09.01.2020, is hereby recalled and the First Appeal No.1648 of 2019, being not maintainable under the provisions of 47(5) of the Maharashtra Public Trust Act, is dismissed.

Needless to say that the respondent no.1 – original appellant, shall be free to take whatever steps as are permissible in law, against the order dated 28.02.2019.

Application is disposed of accordingly.

JUDGE