

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

Miscellaneous Civil Application No.27 of 2020
IN
First Appeal Stamp No.4312 of 2019(D)

Sudhir S/o. Amarsing Sanklecha & Anr. Vs. Amarshingh Rajmalji Sanklecha & Ors.

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

Court's or Judge's Orders

Shri A.J. Gilda, Advocate for the Applicants/Appellants.
Shri Hakani, Advocate for Respondent Nos.5 and 6.

CORAM : S.M. MODAK, J.
DATE : 6th NOVEMBER, 2020.

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

02] Heard learned Advocate Shri A.J. Gilda for the appellants/applicants and learned Advocate Shri Hakani for non-applicant/defendant Nos.5 and 6.

03] The learned Registrar (Judicial) refused to register the First Appeal Stamp No.4312/2019 as per his order dated 5th November, 2019. It was due to non-compliance of the office objections. The Special Civil Suit No.85/2008 was dismissed by Civil Judge (Senior Division), Wardha *vide* judgment dated 2nd November, 2018. The plaintiffs/appellants have preferred an appeal and according to him it goes to Division Bench.

04] While scrutinizing the appeal, the Office has taken various objections. Certain objections relate to procedural compliances, whereas, certain objections relate to proper valuation

and maintainability of the appeal. The plaintiffs/appellants have failed to remove them and that is why the impugned order came to be passed. As the plaintiffs/appellants have given the copy of this application to learned Advocate Shri Hakani, he has appeared on his own. That is a dispute amongst the parties as to maintainability of this application before the Single Judge.

05] Learned Advocate Shri A.J. Gilda invited my attention to the provisions of Chapter II, Rule 7 and to the provisions of Chapter V, Rule 6 of the Bombay High Court Appellate Side Rules, 1960. Whereas, learned Advocate Shri Hakani invited my attention to the provisions of Chapter I, Rule 2(I)(f). Whereas, the learned Registrar (Judicial) refused registration by invoking the powers in terms of Chapter V, Rule 5 of the said rules.

06] I have read all the provisions. I am of this view that the present application for revisions is maintainable before the Single Judge. Rule 2 (I) of Chapter I deals with the subject “matters disposed of by Single Judge”. It is true that Clause (f) empowers a Single Judge to deal with the revision against the orders arising out of the proceedings which are to be dealt with by Single Judge. It means, if the proceeding is to be decided by a Division Bench, this provision does not authorize a Single Judge to deal with the revision. The opening starts with the words “save as otherwise expressly provided by these rules”. It means, if the rules otherwise provide, that provision will be applicable. Whereas, Rule 7 of Chapter II authorises a Single Judge to deal with legality of the order passed by the Registrar etc.

07] The order may be passed under Rules 1 to 5 or under

other rules as per Rule 7 of Chapter II. The order impugned before me is passed under the provisions of Chapter V, Rule 5 of the Rules. Rule 5 empowers the Registrar to refuse registration, if the office objections are not removed. The Registrar (Judicial) is having power to refuse registration for non-removal of the office objections when the matters are to be tried by Single Judge as well as Division Bench. The jurisdiction to deal with legality of such order can be inferred with the Single Judge in view of the provisions of Rule 7 of Chapter II. Hence, I am not entertaining the objection by learned Advocate Shri Hakani. Hence, the following orders:-

- a) The order of learned Registrar (Judicial) dated 5th November, 2019 passed in First Appeal Stamp No.4312/2019 is set aside.
- b) First Appeal Stamp No.4312/2019 is restored to the file.
- c) The applicants/appellants are directed to remove the office objections within a period of five weeks.
- d) Learned Registrar (Judicial) is directed to satisfy himself about the compliance of all the objections and applicants to remove them subject to satisfaction of learned learned Registrar (Judicial).
- e) The civil application is disposed of.

JUDGE