

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

LETTERS PATENT APPEAL NO.114 OF 2003
IN
WRIT PETITION NO.4205 OF 2002

1. Bhanumati wd/o Prakash Shende
aged – major Occupation Service
2. Krushnabai wd/o Deorao Meshram
aged – Major, Occupation Household
3. Raju s/o Deorao Meshram
aged major, occupation Service

All resident of Gaddigodam, Nagpur

... Appellants

-vs-

~~1. Shankar Shripal Brahmne~~
(Dead) thr. Legal Heirs

- 1-a] Anil s/o Shankarrao Brahmne
Aged Major, Occ. Advocate
- 1-b] Ashish S/o Shankarrao Brahmne
Aged Major, Occ. Driver
Both R/o Plot No.3, Nasik Nagar,
Thaware Colony, New Subhedar Layout,
Nagpur-24
- 1-c] Sujata w/o Ashok Khobragade,
Aged about 42 years, Occ. Household,
R/o Central Excise Colony, Type-III-10
Seminary Hills, Nagpur -6
- 1-d] Archana Lalit Khobragade,
Aged 38 years, Occ. Household,
R/o 83, Swami Colony,
Seminary Hills, Nagpur-6
2. Balasaheb Vakilpeth Gruha
Nirman Cooperative Society Ltd.
Nagpur registration No.3891
through its Secretary, Registered

office at Ugantar Vastugruha
Untkhana, Nagpur

... Respondents

Shri Anil S. Mardikar, Senior Advocate with Shri S. G. Joshi, Advocate,
Shri Mayank Gupta, Advocate and Shri Rushabh Khemka, Advocate for appellants.
Shri Gopal B. Sawal, Advocate for respondent No.1.

CORAM : A. S. CHANDURKAR AND PUSHPA V. GANEDIWALA, JJ.

DATE : September 20, 2021

Oral Judgment : (Per : A. S. Chandurkar, J.)

This Letters Patent Appeal takes exception to the order passed by the learned Single Judge in Writ Petition No.4205/2002. By the said order the writ petition preferred by the appellants herein came to be dismissed in limine thereby confirming the order passed by the Co-operative Appellate Court. The Co-operative Appellate Court in the appeal preferred by the respondent No.1 allowed the same and set aside the award passed by the Co-operative Court.

2. After hearing the learned counsel for the parties at length and after perusing the material on record, we are of the opinion that Writ Petition No.4205/2002 deserves to be heard afresh and decided on merits after considering the material available on record. We have arrived at this conclusion for the following reasons :

(a) The award passed by the Co-operative Court in favour of the appellants-original disputants was after recording various reasons which can

be found from paragraph 6 onwards in the judgment dated 11/04/2000. The Co-operative Court has firstly taken into consideration the report of the handwriting expert who was examined at the behest of the opponent No.1. The handwriting expert considered the signature of opponent No.1 on the mortgage deed dated 07/02/1985, his signature on the written statement and his specimen signature. He thereafter opined that the authorship of those documents was of the same person. It has then been held that the evidence of the handwriting expert had not been shattered in the cross-examination and on that basis said report was accepted.

The Co-operative Appellate Court while considering this report of the handwriting expert has on record page No.78 observed that the opinion of the handwriting expert with regard to the signatures of Opponent No.1 was correct. Having accepted the said report/opinion of the handwriting expert, there is no further consideration of the same by the Co-operative Appellate Court. It has not given any reason for not giving any weightage or for ignoring the opinion of the handwriting expert.

(b) The Co-operative Court passed its judgment in the light of the fact that the signature of Opponent No.1 against plot No.26 was seen on the mortgage deed-Exhibit Op-2/1 while the loan against plot No.3 was shown against the name of the disputant. It is to be noted that the mortgage deed was produced on record at the behest of the Opponent No.1. The Co-

operative Appellate Court has accepted this position on record page No.80 but has again not given any reason for discarding this material. It has been further held by the Co-operative Court that the stand of the Opponent No.1 that his signature was forged was not proved nor was copy of resolution dated 25/11/1980 produced on record by him. Absence of possession letter with regard to plot No.3 has also been referred to. The Co-operative Appellate Court has however proceeded to reverse the judgment of the Co-operative Court but without giving any definite finding or recording a conclusion as to how the view taken by the Co-operative Court on the basis of such material was incorrect.

3. The learned Single Judge in the order dated 07/03/2003 has merely observed that since the Co-operative Appellate Court had passed a detailed order and had taken into consideration the deposition of witnesses, there was no reason to interfere. We find that in the light of the fact that there was a judgment of reversal by the Co-operative Appellate Court by setting aside the award passed by the Co-operative Court, consideration of the material available on record was warranted in view of the grounds raised in the writ petition. We find that in the writ petition preferred by the appellants under Articles 226 and 227 of the Constitution of India specific grounds as to non-consideration of relevant material by the Co-operative Appellate Court were raised. Additional grounds of challenge based on

perversity have also been raised. Though an objection based on maintainability of the Letters Patent Appeal has been raised by the learned counsel for the respondent No.1, in the light of the observations of the Honourable Supreme Court in its recent decision in ***General Manager, Electrical Rengali Hydro Electric Project, Orissa and ors. vs. Giridhari Sahu and ors. (2019) 10 SCC 695*** and especially paragraph 28 thereof which read as under:

“ 28. An error of law which becomes vulnerable to judicial scrutiny by way of certiorari must also be one which is apparent on the face of the record. As held by this Court in Hari Vishnu Kamath vs. Ahmad Ishaque AIR 1955 SC 233, as to what constitutes an error apparent on the face of the record, is a matter to be decided by the Court on the facts of each case. A finding of fact which is not supported by any evidence would be perverse and in fact would constitute an error of law enabling the writ Court to interfere. It is also to be noticed that if the overwhelming weight of the evidence does not support the finding, it would render the decision amenable to certiorari jurisdiction. This would be the same as a finding which is wholly unwarranted by the evidence which is what this Court has laid down in Parry & Co. Ltd. vs. P.C. Pal, AIR 1970 SC 1334.” (emphasis supplied by us).

Thus we are satisfied that the Letters Patent Appeal is maintainable.

4. Both sides have brought on record substantial material in support of their respective contentions and a proper consideration of the same and a finding as to why the Co-operative Appellate Court preferred to accept the case of the Opponent No.1 while reversing the judgment of the

Co-operative Court it is required to be gone into. For all these reasons we are satisfied that fresh consideration of the writ petition is warranted in these facts. It is true that the proceedings are pending since long and in that backdrop the learned Single Judge can be requested to expeditiously decide the aforesaid writ petition on its own merits without being influenced by any observations made in this order.

5. Accordingly order passed by the learned Single Judge in Writ Petition No.4205/2002 dated 07/03/2003 is set aside. Writ Petition No.4205/2002 is restored to file for fresh adjudication in accordance with law. We request the learned Single Judge to expeditiously decide the said writ petition considering the age of the litigation. All questions on merits are kept open.

The Letters Patent Appeal is allowed in aforesaid terms.

No order as to costs.

JUDGE

JUDGE