

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
CIVIL APPLICATION (S) NO. 669/2019
IN
SECOND APPEAL NO. 122/2007
(Datta s/o Daulat Ingole vs. Vilas Digambar Vitkare and others)

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

Court's or Judge's order

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Mr. R.N.Ghuge, Advocate for the appellant
Mr. M.G.Sarda, Advocate for respondent nos. 1 to 4 /Applicants

CORAM : MRS.SWAPNA JOSHI, J.

DATED : 22nd February, 2021

1. Heard learned counsel for the respective parties.
2. The respondent nos.1 to 4/applicants have filed the instant application for modification of the order dated 17.02.2017 passed in Civil Application No. 977/2015, thereby seeking a direction that the findings of the learned trial Court be certified by the learned District Court, before remitting the same to this Court.
3. Learned Advocate for respondent nos.1 to 4/applicants contended that as per the provisions of Rule 470 of the Civil Manual, the findings of the trial Court should be certified by the District Court. He submitted that in the instant case, if findings are remitted directly to this court, the findings would be required to be challenged before this Court. However since the present proceeding being a Second Appeal, if the findings of the facts are challenged before this Court, it would amount to deciding the first appeal to that extent.

4. Learned Advocate for the appellant formally opposed the said application, however, he did not dispute the legal position.

5. Rule 470 of Civil Manual contemplates as below :

“ When the High Court refers a suit to the trial Court for recording its findings on any issue or issues with a direction that the findings should be certified through the District Court, the District Court should also record its findings before transmitting the case papers to the High Court.”

Thus, the legal provisions are unambiguous and, therefore, the order passed by this Court on 17.02.2017 needs to be modified.

6. The last sentence of the order dated 17.02.2017 i.e. ‘The Trial Court shall remit the findings to this Court directly’ shall be replaced by the following sentence :-

“The findings of the trial Court shall be certified through the District Court and the District Court shall also record its findings before transmitting the case papers to this Court”.

7. With the above modification, the Civil Application stands disposed of.

JUDGE