

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO. 21 OF 2022
WITH
INTERIM APPLICATION NO. 133 OF 2022
IN
APPEAL FROM ORDER NO. 21 OF 2022**

Sambhaji Babasaheb Khot

...Appellant

V/s.

Tukaram Shivappa Khot & Ors.

...Respondents

Mr. Vaibhav R. Gaikwad for the appellant.

CORAM : NITIN W. SAMBRE, J.

DATED : 21st NOVEMBER, 2022

P.C.:

1. As the appellant / defendant has failed to submit his written statement, after the suit was decreed in an appeal, the District Judge passed an order of remand permitting the appellant to place on record written statement with following observations read thus:-

ORDER

1) Regular Civil Appeal No. 83/2012 is allowed and matter is remanded back to the Trial Court for fresh hearing subject to following conditions.

- a) The appellant shall pay the costs of Rs. 10,000/- (Rupees Ten Thousand only) to the respondents within 15 days from today.
- b) The appellant shall serve all the respondents before Ld. Trial Court.
- c) The appellant shall not seek any adjournment before the Ld.

Trial Court.

- d) The appellant shall deposit the cost of Rs.5,000/- (Rupees Five Thousand only) before Ld. Trial Court within 15 days from the date of this order.
- f) Upon depositing the costs within time Ld. Trial Court shall take the written statement of the defendant on amended plaint on record and decide the matter in accordance with the Law on its own merits.
- g) Both parties are at liberty to lead evidence.
- h) Ld. Trial Court shall decide the matter as early as possible preferably within six months from the date of first appearance and both the parties shall co-operate Ld. Trial Court to decide the matter.
- i) Appellant shall file undertaking before this Court and before the Ld. Trial Court that he/they will abide the conditions imposed by this Court.
- j) In the event of single breach of any of the condition, the Judgment and decree passed by Ld. Trial Court dtd.19/12/2011 will be treated as revived as it is.

2. It is the contention of the learned counsel for the appellant Mr. Gaikwad that the Appellate Court has put the appellant to a stringent condition that in case if the conditions mentioned therein are not complied with in its true letter and spirit, the suit was to be termed as dismissed as has been already ordered. It is claimed that such order is unreasonable as the same does not grant reasonable opportunity to the appellant to defend his claim before the Court below.

3. I have appreciated the said submissions.

4. The Civil Suit was initiated in 1999 which was for declaration and injunction.

5. After the suit was decreed, the appellant has preferred the

appeal. The Appellate Court has exercised equity in favour of the appellant and in the interest of justice permitted to accept his written statement subject to compliance of certain reasonable conditions. The appellant in fact has complied with the conditions as placed before the first Appellate Court. Further, he claimed that in case of prayer for adjournment on genuine ground, the Appellate Court has closed such remedy.

6. I am afraid the judgment of the Appellate Court cannot be stretched to the extent of the claim put forth by Mr. Gaikwad of rejection of prayer for adjournment even on reasonable and serious grounds.

7. That the aforesaid observations are just and proper in the circumstances of the case in hand, which warrant no interference in the order of remand, the appeal as such stands dismissed.

8. Proceedings be decided as directed by the Appellate Court within the time bound manner as directed by Appellate Court.

9. In view of the dismissal of A.O. No. 21 of 2022, the pending I.A. No. 133 of 2022 is also disposed of.

(NITIN W. SAMBRE, J.)