

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.1072 OF 2019
WITH
INTERIM APPLICATION NO.1685 OF 2020
IN
APPEAL FROM ORDER NO. 1072 OF 2019

Machindra Ramchandra Deokar, deceased, .. Appellants
Ratnabai Machindra Deokar & ors

Versus

Dada Bhika Bhujbal, deceased thru LRs .. Respondents
Sunita Dada Bhujbal & Ors

...

Mr. Rahul S. Kadam for the appellants.
Mr.Sagar Kasar for the respondents.

CORAM: BHARATI DANGRE, J.
DATED : 7th APRIL, 2022

P.C:-

1 The learned Appellate Court raise a challenge to the order passed by the District Judge-5, Pune in Civil Appeal No.1050 of 2012. The said Appeal arises out of the judgment and decree passed in RCS No.552/2008 dated 18/1/2011 passed by the Civil Judge, Jr. Division, Pune.

By order passed on 29/10/2018, the Appellate Court set aside the RCS No.552/2008 and remanded the matter to the

trial Court. Parties were directed to present before the trial Court and were even granted liberty to apply under Order 23 Rule 1 of the CPC. It was also directed that the trial Court, shall after hearing both the parties, pass necessary orders.

2 The proceedings in RCS No.552/2008 were remitted to the trial court.

3 The plaintiff in the said Suit i.e. the present defendant moved the Application below Exhibit-147 in that Suit, seeking withdrawal of the Suit with liberty to file fresh Suit on the same cause of action. This application came to be allowed on 3/8/2019 by recording that though the defendants were granted last chance to advance their arguments, opposing the withdrawal, they remained absent and therefore, the Suit was permitted to be withdrawn. Consequentially, on 3/8/2019, the following order came to be passed below Exhibit-1 in RCS Suit No.552/2008.

4 The learned counsel Shri Kadam has perfectly justified in submitting that the Suit cannot be withdrawn, particularly when the rights have been vested in the parties. However, it is open for him to oppose the withdrawal and the application was in fact opposed before the learned Judge, but on the concerned date, he did not remain present and therefore, the suit was permitted to be withdrawn. However, liberty was granted to file fresh suit, which is also filed.

5 The learned Judge has recorded that since the Appellate Court, while remanding the matter granted liberty to the plaintiff to apply under Order 23 Rule 1, if the plaintiff wants to withdraw the Suit, he can file a fresh Suit on the basis of the same cause of action. This action can be opposed only before the same Judge, which the appellant has failed to do so.

Even at this stage, it is permissible for him to take necessary steps before the concerned Court.

However, as far as the present Appeal is concerned, it has been rendered infructuous since the order of the Appellate Court is challenged and in the wake of the subsequent development that the Suit itself do not survive for adjudication, and on its remand, it is withdrawn, the Appeal do not require any adjudication on merits.

Appeal is disposed off.

In view of the disposal of the Appeal, Interim Application No.1685/2020 does not survive and is disposed off accordingly.

(SMT. BHARATI DANGRE, J.)