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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**CIVIL WRIT PETITION NO. 1582 OF 2010**

**RAMBHAU DAGADU BANDE**

**....PETITIONER**

**V/s.**

**SONABAI DUNDA BANDE AND ORS**

**.....RESPONDENTS**

**Mr. A. A. Garge Advocate for the Petitioner**

**Mr. U. B. Nighot Advocate for the Respondent no. 1**

**Mr. Shriram S. Kulkarni for Respondent nos. 2A to 2E**

**CORAM : NITIN W. SAMBRE, J.**

**DATE: APRIL 8, 2022.**

**P.C.:**

1) Petitioner's Suit being R.C.S. No. 238/1998 for specific performance and possession came to be decreed on 27/10/1999 by Civil Judge Junior Division, Junnar. Operative order of the said Judgment reads thus:

“(1) The suit is decreed with costs.

(2) Defendant No. 1 is directed to execute the sale deed of the suit property as particularised in plaint para-1 in favour of the plaintiff within two months from the date of order.

(3) If defendant No. 1 failed to execute the sale deed the plaintiff shall apply to the Court for the execution of the sale deed.

(4) The plaintiff on execution of the sale deed is entitled for the possession of the suit property if not found in possession.

(5) Decree be drawn accordingly.”

2) Plaintiff took out an Application bearing No. 6/2006 claiming that even though Judgment is delivered in the Suit, Decree is not signed and as such, directions be issued to sign the Decree under Order XX Rule 8 of Code of Civil Procedure, 1908 (Hereinafter referred to as ‘CPC’ for the sake of brevity). Said prayer is objected by Respondent-Defendant. The aforesaid Application being 6/2006 came to be disposed of by order dated 21/11/2008.

3) Misc. Civil Appeal No. 9/2009 under Order XLIII Rule 1-A(1) read with Section 104(i) of CPC is taken out by the Petitioner praying therein quashing and setting aside of the order dated 21/11/2008 passed on Application 6/2006. Prayer is also made that the Court of Civil Judge Junior Division, Junnar be directed to sign the Decree.

4) Said Appeal being Misc. Civil Appeal No. 9/2009 came to be

decided on 29/12/2009 thereby recording a finding that Appeal is not maintainable. As such, this Petition.

5) The contentions of learned counsel for the Petitioner are, correction in the Decree was already permitted at the behest of Respondent-Defendant. As such, Petitioner has every right to question the same in Appeal under Section 96 of the Code of Civil Procedure, 1908. The Court below i.e. learned District Judge had taken recourse to provisions of Section 152 & 153 of the CPC thereby observing that amendment of Judgment, Decree or Orders can be granted by the very same Court which has passed such Decree or Order. He would as such claim that Petitioner be granted liberty to prefer a substantive Appeal under Section 96 of the CPC or any such other proceedings as is available and permissible in law questioning the Judgment and Decree which is modified/corrected pursuant to prayer of Respondent-Defendants.

6) Mr. Shriram Kulkarni, learned counsel appearing for Respondent would urge that if such right is granted to Petitioner, right of the Respondent-Defendant to resist the same be kept open on its own merits including that of an issue of limitation.

- 7) I have considered said submissions.
- 8) Fact remains that right granted to parties to prefer an Appeal is a substantive right and such right cannot be taken away by Agreement or judicial orders.
- 9) The Decree-Holder who has preferred Application No. 6/2006 which is termed as Exh. 1 was under Order XX Rule 8 of CPC for supply of omissions so as to correct the Decree. It is ordered that omission on signing the Decree was provided by the Court.
- 10) Application Exh. 29 was preferred by Defendant no. 2 for adding his name in operative part of the Judgment alongwith Plaintiff and corrective operative part was ordered to be read as under:

“(1) .....

(2) Defendant No. 1 is directed to execute the sale deed of the suit property as particularized in plaint para – 1 in favour of the Plaintiff **and Defendant No. 2** within two months from the date of order.

(3) .....

(4) .....

(5) .....

11) Based on the pleadings in the Plaint, observations in the Judgment in the Suit and operative part delivered in Suit No. 238/1998, the Court below held that operative part should have been shown as Plaintiff and Defendant no. 2 jointly are entitled for specific performance. Accordingly, directed the correction to the above effect.

12) It is this order which is questioned in Appeal which has lead to passing of the order impugned.

13) In that eventuality, it is clarified that it is always open for the Petitioner to prefer an Appeal or such other proceedings as is available and permissible in law against the Judgment and Decree passed in aforesaid Suit being R.C.S. No. 238/1998, if he is aggrieved by the same. It is worth to mention that if such Appeal/proceedings is preferred, it shall be open for the Appellate Court to deal with the same in accordance with law without being influenced by earlier findings recorded by Appellate Court thereby holding that Appeal preferred under Order XLIII Rule 1-A(1) read with Section 104(i) of CPC is not maintainable.

14) Since the Appeal/proceeding which is to be preferred by the Petitioner is against final Judgment and Decree after correction is

carried out at the behest of Respondent, it is clarified that time spent by the Petitioner in prosecuting the present proceedings be considered, in case the issue of limitation props up.

15) Petition as such stands allowed in the above terms.

**[NITIN W. SAMBRE, J.]**