

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.266 OF 2022
ALONG WITH
INTERIM APPLICATION NO.1822 OF 2022

Jayashri Ramesh Lad Through PA]
Holder Ramesh Bandopant Lad.] ... Appellants

Vs.

Ananda Vithoba Thombare & Anr.] ... Respondents

...

Mr. Nikhil N. Pawar for the appellants.

Mr. Rahul P. Kasbekar for respondent Nos.1 and 2.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 25TH MARCH, 2022.

P.C. :-

1. The present Appeal from Order is filed being aggrieved by the order dated 20/01/2022 passed by the District Judge No.II, Ichalkaranji in Regular Civil Appeal No.51 2020 setting aside the judgment and decree of the trial court dated 14/10/2016 and remanding the matter for a fresh hearing to the trial court.

2. The impugned order reveals that the court was impressed by the fact that the appellants before it i.e. the original defendants had put forth defences, which would *prima facie* affect the credibility of the case and the evidence given by the plaintiff, but no written statement was filed on record. Based on the principle that no person shall be condemned unheard, when the defendants sought an opportunity of hearing, the court deemed it appropriate to remand the matter to the trial court to afford an opportunity to the defendants to set up their defence.

3. I see no legal infirmity in the impugned order, but the learned counsel for the appellants is justified in submitting that it was the mistake of the defendants that though they put their appearance, written statement was not filed and on that error on their part, the appellate court should not have set aside the judgment of the trial court which decreed the suit in favour of the plaintiff. In any case, since it is informed that the matter is remanded and now it is coming up for hearing on 30/03/2022 and even a counter claim has been filed in the said proceedings, the Civil Judge, Senior Division, Ichalkaranchi shall terminate the proceedings in Special Civil Suit No.61 of 2014 within four months from today.

4. Needless to state that both the parties shall render their cooperation in the conclusion of the proceedings and shall not seek

unnecessary adjournments. With the above direction, the appeal is disposed off.

5. In view of the disposal of the appeal, the interim application does not survive and is disposed off as such.

6. Needless to say that the finding recorded by the appellate court on merit shall not influence the trial court while determining the suit and counter-claim.

[SMT. BHARATI DANGRE, J.]