

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 481 OF 2022
WITH
INTERIM APPLICATION NO. 9986 OF 2022
IN
SECOND APPEAL NO. 481 OF 2022**

Smt.Balmani Narsayya Mamdel & Anr. ... Appellants

Vs.

Mr.Prabhakar Rangnath Lakade
(since deceased) through his heirs :
Sangita Prabhakar Lakade & Ors. ... Respondents

Mr.Sushil A. Inamdar, for Appellants.
Mr.Girish R. Agrawal for Respondents No.1 to 3.

**CORAM : S.M. MODAK, J.
DATE : 10TH AUGUST, 2022**

P.C. :

1. Circulation is asked by the Appellants. My attention is invited to the order dated 15th July, 2022 passed by this Court. On the basis of liberty sought by the Appellants, the Court has passed following order:

“3. Liberty as prayed for is granted. Upon making such request, Executing Court to consider the request and pass necessary orders.”

2. Earlier to that, on 4th July, 2022, this Court has passed the following order:

“4. Liberty to learned Counsel for the appellant, to request the executing Court to adjourn the execution proceedings till the next date.”

3. Today, learned Advocate for Respondents took preliminary objection about maintainability of the Second Appeal. My attention is invited to the provisions of Section 34(3) of the Maharashtra Rent Control Act, 1999. It reads as follows:

“34. Appeal.

(1)

(a)

(b)

Provided that,

(a)

(b)

(i)

(ii)

(c)

(d)

(2)

*Provided that,**(3) No further appeal shall lie against any decision in appeal under sub-section (1).**(4)” (Emphasis supplied)*

4. It is the contention of the Respondents that the decree passed by the Executing court is passed as per the provisions of the Maharashtra Rent Control Act, 1999. Only First Appeal is maintainable and no further Appeal lies. According to him, similar was a provision by way of Section 29 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. He has submitted that even if an order is passed under the provisions of Order 21, Rule 99 of the Code of Civil Procedure, 1908, by way of obstruction to execution of eviction decree passed as per the 1947 Act, similar analogy is applicable. He relied upon the observations by this Court in a case of ***Narishala Society V/s. Parmanand Bhimandas Talrej & Anr. [2010(6) ALL MR 401]***.

5. Learned Advocate for the Appellants invited my attention to the order dated 6th June, 2019, passed by the Executing Court in Misc.Application No.69 of 2013. There was an obstruction to execution of a decree sought by way of Darkhast No.58 of 2010.

The said obstruction was dismissed, whereas it was confirmed by the First Appellate Court on 29th March, 2022, by way of Regular Civil Appeal No.296 of 2019.

6. Learned Advocate for the Appellants also invited my attention to the judgment passed by the Court in a Special Civil Suit No.1427 of 1997 preferred by the Appellants against predecessor in title of the present Respondents.

7. About the objection as to maintainability of the Second Appeal, learned Advocate for the Appellants submitted that he may file an appropriate proceedings and it will take some time for doing the same. Further, he submitted that the liberty recorded by this Court in earlier two orders be continued for some duration. There is opposition on behalf of the Respondents.

8. As there is a consensus about non maintainability of the Second Appeal, this Second Appeal has to be disposed of. Second appeal is disposed of as not maintainable. The Appellants are at liberty to initiate an appropriate proceedings. In view of that, following order is passed:

: O R D E R :

- i) Appeal is disposed of.
- ii) The Appellants are at liberty to make a request before the Executing Court for adjourning the matter and after hearing the decree holder, Executing Court to pass appropriate order on such request as per the merits.
- iii) Interim Application, if any, also stands disposed of.

(S.M. MODAK, J.)