

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

**SECOND APPEAL NO.709 OF 2022
WITH
INTERIM APPLICATION NO.19764 OF 2022**

Shri. Manoj Ramaji Chourasia	...Appellant
Versus	
Shri. Shantilal Pabudan Chordiva	...Respondent

Mr. Ashutosh S. Kale, for the Appellant.

Mr. Ravindra D. Deshmukh, for the Respondent.

**CORAM : MADHAV J. JAMDAR, J.
DATED : 22nd DECEMBER 2022**

P.C. :

1. Heard Mr. Ashutosh Kale, learned counsel appearing for the Appellant and Mr. Ravindra Deshmukh, learned counsel appearing for the Respondent.

2. Learned counsel appearing for the Appellant submitted that the substantial question of law involved in this Appeal is that although before the learned First Appellate Court contention regarding not granting opportunity to the Appellant due to COVID pandemic is raised as well as the Appeal was argued on merits, however, the learned First Appellate Court

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has only considered the first aspect and not considered the merits of the appeal.

3. The learned First Appellate Court by giving elaborate reasons, has come to the conclusion that inspite of granting sufficient opportunity, the Defendant failed to file Vakalatnama and defend the suit. As far as the said finding is concerned, nothing is shown to point out that the said finding has been arrived at without considering the relevant factual position and evidence on record. Therefore, as far as the finding recorded in that aspect is concerned, there is no illegality or irregularity and the same is confirmed.

4. However, it is to be seen that the learned First Appellate Court has made reference to the written notes of arguments submitted by the Appellant. In the said written notes of arguments, there is some contentions raised regarding merits of the case. Perusal of the Judgment and Decree passed by the learned First Appellate Court shows that the said points on merits have not been considered by the learned First Appellate Court. The learned counsel appearing for the Appellant has also submitted that oral submissions on merits were also advanced

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before the learned First Appellate Court, however they were not considered.

5. For the above reasons, the impugned Judgment and Decree of the learned First Appellate Court is illegal and perverse as the points raised on merits are not considered.

6. Faced with the above difficulty, Mr. Ravindra Deshmukh, learned counsel appearing for the Respondent after taking telephonic instructions from the Respondent submits that Respondent has no objection if impugned Judgment and Decree of the learned First Appellate Court is set aside and matter is remanded back to the learned First Appellate Court. However, he submits that the said Appeal be directed to be disposed of within time bound manner.

7. In view of above, the following order is passed:-

ORDER

(a) The impugned Judgment and Decree dated 10th August 2022 passed by the learned District Judge-9, Nashik in Regular Civil Appeal No.75 of 2021 is quashed and set aside.

(b) Said Regular Civil Appeal No.75 of 2021 is

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restored to the file of learned District Judge, Nashik at Nashik.

(c) Both the parties-Appellant and Respondent personally or through Advocate shall appear before the learned First Appellate Court on 23rd January 2023 for fixing schedule of hearing.

(d) The concerned learned District Judge, Nashik is requested to disposed of the Regular Civil Appeal No.75 of 2021 on or before 31st July 2023.

(e) It is clarified that this Court has not considered the merits and the contentions of both the parties are expressly kept open except, the contentions which are dealt with in this order.

(f) As the disposal of the Appeal filed by the Appellant is expedited, the decree passed by the learned Trial Court is stayed. This stay is granted on the condition that the Appellant shall deposit an amount of Rs.25,000/- per month before the learned First Appellate Court on or before 5th of each month till disposal of the Appeal by the learned First

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Appellate Court. Said payment of Rs.25,000/- is subject to the final order to be passed by the learned First Appellate Court.

(g) The Second Appeal is disposed of in the above terms with no order as to costs.

(h) In view of the disposal of the Second Appeal, the Interim Application does not survive and disposed of as such.

[MADHAV J. JAMDAR, J.]

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