

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.876 OF 2018

Balasaheb Hanumantrao Jadhav And Others ...Petitioners

Versus

Dharmaraj Hanumantrao Jadhav And Another ...Respondents

Mr. B.R. Sable, Advocate for the petitioners.

Mr. S.B. Kakde, Advocate for respondent No. 1.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 25th APRIL, 2023

ORDER :

1. The petitioners are aggrieved by clause 2 of the operative order dated 31.03.2015 passed by learned Ad-hoc District Judge-1, Majalgaon, District- Beed, in Regular Civil Appeal No. 60 of 2012, to the extent it directs the petitioners to furnish bank guarantee for withdrawing the amount of sugarcane bill deposited by respondent No. 2/Defendant No. 5 in Regular Civil Suit No. 25 of 2011.

2. Facts which are not disputed are that in the suit filed by respondent No. 1/original plaintiff for declaration and mandatory injunction, the petitioners were original defendants

No. 1 to 3 and respondent No. 2 was defendant No. 5. The suit was dismissed. The Trial Court directed that the sugarcane bill amount deposited by defendant No. 5 be given to defendant No. 1 after the appeal period is over.

3. Petitioners approached this Court by filing Writ Petition No. 9950 of 2014 pointing out that petitioners moved application for withdrawal of said amount after the appeal period is over. Thereafter, respondents filed Regular Civil Appeal No. 60 of 2012 and by interim order passed below Exhibit-5, the Appellate Court has stayed the judgment and decree of the Trial Court and has restrained the petitioners from withdrawing the amount as permitted by the Trial Court. This Court refused to entertain the writ petition since it was against interlocutory order.

4. Regular Civil Appeal was dismissed on merits. The Appellate Court while dismissing the appeal in clause 2 of the operative order has directed that "The amount of sugarcane bill deposited by respondent No. 5/defendant No. 5 as per order of the District Court Majalgaon, be paid to defendant/respondent no. 1 Balasaheb S/o Hanumantrao Jadhav, after appeal period is

over, after obtaining Bank guarantee to the extent of said deposited amount and subject to the decision of R.C.S. No. 409/2006 pending before Civil Court, Majalgaon for partition and separate possession.” The petitioners are aggrieved by said direction to the extent it directs the petitioner No. 1 to furnish bank guarantee to the extent of deposited amount.

5. Heard the learned advocate for the petitioners and learned advocate for the respondents. Perused the memo of petition, annexures thereto and the impugned order.

6. Learned advocate for the respondents strongly opposed the prayer of the petitioners contending that both the Courts have recorded erroneous finding of facts. In fact, Petitioner No. 1 is not entitled for the said amount and according to him respondent No. 1 is entitled for the said amount. This contention cannot be accepted in the light of judgment and decree passed by the Trial Court, confirmed by the Appellate Court. Indisputably, both these decisions are not challenged by respondent No. 1.

7. In that view of the matter, writ petition is allowed.

8. The impugned direction issued by the Appellate Court to the extent of furnishing bank guarantee for withdrawing the amount of sugarcane bill deposited by respondent No. 2/ original defendant No. 5 in Regular Civil Suit No. 25 of 2011 is modified to the following extent:

“The petitioners are permitted to withdraw the amount of sugarcane bill deposited by respondent No. 2/ original defendant No. 5 in Regular Civil Suit No. 25 of 2011 along with accrued interest thereon, by submitting undertaking before the Trial Court.”

[NITIN B. SURYAWANSHI, J.]