

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.182 OF 2022
WITH CA/5065/2022 IN SA/182/2022

ROHIDAS HEMRAJ MAHAJAN
VERSUS
RAGHUNATH DOULAT MAHAJAN AND ORS

...

Advocate for Appellant : Mr. S. T. Mahajan
Advocate for Respondent No. 1 : Mr. D. P. Pande
Advocate for Respondent No. 2 – State : Mrs. P. V.
Diggikar
Advocate for Respondent No. 3 : Mr. S. B. Munde

...

CORAM : R.M. JOSHI, J

DATE : APRIL 11, 2023

PER COURT :

1. At the outset, learned Counsel for the Original Defendant No. 1 states that in R.C.A. No. 658/2017 the arguments of this defendant was not heard and the impugned judgment came to be passed. Thus, according to him, opportunity of assailing findings on facts is denied to this Appellant.

2. Learned Counsel for the Respondent – Original Plaintiff opposed the said contention by referring to the judgment of the First Appellate Court wherein it is recorded that around 9 adjournments were given for arguments, however, finally since no one appeared on

behalf of Defendant No. 1 impugned judgment came to be passed. Thus, according to him, it is not the fit case for remand.

3. It is pertinent to note that the judgment in question came to be passed on 06th December, 2021. There cannot be any dispute about the fact that by this time effect of the Covid-19 pandemic was not over. Pertinently, the Hon'ble the Apex Court extended the period of limitation upto February, 2022. This was done keeping in mind difficulties faced by ordinary people owing to pandemic situation. Though, this Court finds that adjournments were granted to the Defendant No. 1 to make submissions, however, considering the circumstances then prevailed, this Court is of the view the said situation was not appreciated correctly by First Appellate Court.

4. Therefore, following substantial question of law is framed:

"Whether in the peculiar circumstances of Covid-19 pandemic, the First Appellate Court has committed error in deciding First Appeal in absence of the arguments of the Defendant No.

1".

5. Having regard to then prevailing circumstances on account of Covid-19 pandemic, there could be more than one reason and justification for the Defendant No. 1 for not appearing before the First Appellate Court. In such case, prejudice is definitely caused to Defendant No. 1 by denial of opportunity to advance argument in support of his case, In the result, the substantial question of law is answered in affirmative.

6. In view of this, impugned judgment cannot sustain and the same is set aside. To accord opportunity of hearing to Defendant No. 1 the First Appeal is relegated back to the First Appellate Court for its decision afresh after hearing submissions of rival parties. It is clarified that no any other application of any nature shall be entertained by the First Appellate Court. First Appellate Court is only expected to hear the arguments of both sides and to pass judgment.

7. Parties are directed to appear before the First Appellate Court on 02nd May, 2023. First Appellate

Court shall not issue any fresh notice for appearance to any party in the proceeding. First Appellate Court is directed to decide the appeal on or before 30th June, 2023. It is open for the First Appellate Court to pass appropriate order, if the parties or their Counsels fail to appear before it. The record and proceedings be sent to the First Appellate Court forthwith.

(R.M. JOSHI, J.)

Malani