

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION NO. 78/2021 IN SECOND APPEAL ST. NO.1155/2021

Sushama Raghunath Sanghi and Ors. .vs. Jaydeo Dewaji Meshram and Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Dr. R. I. Agrawal, Advocate for applicants.

Mr. S. Hiware, Advocate Instructed By Mr. A. M. Gdeam,
Advocate for respondent.

CORAM : ANIL L. PANSARE, J.

DATE : 12.07.2023

Learned counsel for the applicants seeks leave to file appeal against judgment and decree dated 24.04.2017 passed by Ad hoc District Judge – 3, Nagpur. Learned first appellate Court has allowed the appeal filed by the original plaintiff granting decree of specific performance of contract executed between the original plaintiff – the purchaser and original defendants – the vendors.

The appellants are the one, to whom the original defendants – vendors have sold the suit property pending suit. The original defendants did not bring this fact to the notice of the trial Court as well as to the first appellate court. According to the learned counsel for the appellants, the plaintiff and the defendants are in collusion and therefore the defendants did not appear before the trial Court and thus ex parte decree has been passed.

Considering the above, the appellants will be directly affected by the judgment and decree passed by the first appellate court. It prima facie appears that the said decree has been passed by suppressing material facts. The appellants, therefore, are entitled to prefer the appeal and therefore leave to file appeal, as prayed for, is granted.

I am informed that the appeal has already been registered. An application for condonation of delay has been filed. The order on the application seeking condonation of delay has been passed without pointing out to the Court that the present application was pending. Nonetheless, since the application is now allowed, registration of the appeal being mere an irregularity, is required to be regularized. Order accordingly. The appeal be processed in accordance with law.

The application is disposed of in the above terms.

Second Appeal No.193/2023

Learned counsel for appellants makes a request to continue the interim order. However, there is no interim order. On previous date, learned counsel for the respondent no.1 made a statement that respondent no.1 shall not create third party interest in the suit property. Mr. Shashank Hiware, learned counsel instructed by

Mr.Gedam, learned counsel for the respondent no.1 submits that he is not aware of the facts and cannot extend the statement made by Mr. Gedam.

If that be so, considering the status of the appellants, it will be necessary to stay the effect and operation of the impugned judgment, which is stayed until further orders.

(Anil L. Pansare, J.)

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