

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

WRIT PETITION NO. 4214 OF 2021

Ashok Ganpat Gathe__ Vs. __Mahesh Laxmanrao Tahiliyani and anr

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

Court's or Judge's orders

Mr.C.S.Samudra, Advocate for petitioner
Ms Raama Kukday, Advocate for respondent Nos. 1 & 2

CORAM : AVINASH G. GHAROTE, J.

DATE : 28/03/2023

C.A.W. NO. 930/2022

1] Heard Mr. Samudra, learned counsel for the petitioner and Ms. Kukday, learned counsel for the respondents.

2] Civil Application No.930/2022 seeks amendment of the writ petition, to bring on record the position that the execution proceedings have been disposed of by execution of a sale deed of the suit property in favour of the respondents herein and therefore, this position will have to be taken into consideration while deciding this petition, which challenges the rejection of the application under Order 9 Rule 13 of the C.P.C. by the learned Trial Court and the subsequent dismissal of the appeal.

3] The application is vehemently opposed by Ms.Kukday, learned counsel for the respondents contending that in view of the disposal of the execution petition by the sale deed having been executed in favour of the respondents, the present petition has been rendered infructuous.

4] I am afraid, I am unable to accept the contention on behalf of the learned counsel for the respondents. Even if the execution petition is disposed of, that would not render the present petition infructuous, as the challenge would still survive. Rather it would be appropriate for the position regarding disposal of the execution petition to be brought on record, as the petition then can be decided by taking those facts into consideration.

5] In that view of the matter, Civil Application (W) No. 930/2022 is allowed.

6] The amendment be carried out by the end of this week. List the matter thereafter.

JUDGE

Rvjalit