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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**970 CIVIL APPLICATION NO. 5063 OF 2025
IN SA/879/2018**

NAGAPUR MASJID TRUST THROUGH ITS TRUSTEE AND OTHERS
VERSUS
LATE KAKASAHEB MHASKE MEDICAL FOUNDATION
WITH
CIVIL APPLICATION NO. 4553 OF 2025
IN SA/879/2018

LATE KAKASAHEB MHASKE MEDICAL FOUNDATION
VERSUS
NAGAPUR MASJID TRUST THROUGH ITS TRUSTEE AND OTHERS
WITH
CIVIL APPLICATION NO. 13969 OF 2018
IN SA/879/2018

LATE KAKASAHEB MHASKE MEDICAL FOUNDATION
VERSUS
NAGAPUR MASJID TRUST THROUGH ITS TRUSTEE AND OTHERS

Mr.R.N.Dhorde, Sr.Advocate a/w Mr.S.B.Bhapkar, Advocate for the applicants.

Mr.A.M.Gholap, Advocate for respondent Nos. 1, 4 and 5.

Mr.V.D.Salunke, Advocate for the applicants/intervenor.

(CORAM : PRAFULLA S. KHUBALKAR, J.)

DATE : MAY 2, 2025

PER COURT :

1. Heard learned Senior Advocate Mr.Dhorde i/b Mr.Bhapkar
for the appellants.

2. This appeal u/s 100 of the CPC challenges the judgment and decree dated 10.10.2018 in RCA No.118/2017 by which judgment and decree dated 15.03.2017 passed by the Civil Judge,S.D. Ahmednagar in RCS No.273/2005 is reversed.

3. The instant second appeal was filed in November 2018. By order dated 26.11.2018, observing the possibility of settlement, the matter was referred for mediation and by consent of both the parties, name of mediator was finalised. The order dated 26.11.2018 records a statement on behalf of respondent Nos. 1, 2, 4 and 6, who appeared on caveat that “plaintiffs have not filed and will not file executive proceedings till the next date i.e. 31.01.2019”. The matter was thereafter referred to the Mediator and the statement made on behalf of respondent Nos. 1, 2, 4 and 6 was continued from time to time. Record reveals that the mediation was not successful and the statement in the nature of undertaking remained in operation.

4. On 21.04.2025, an urgent circulation of the second appeal was sought for by the learned Advocate for the appellants submitting

thereby that Civil Application No.4553/2025 was filed by the appellants seeking urgent interim orders. This Civil Application No.4553/2025 was filed by the appellants alleging therein that pursuant to possession warrant, the respondents have taken possession of the suit property and demolition of the standing structures on the suit property was started. In view of urgency pointed out, the civil application was heard on 21.04.2025 itself and after hearing both the contesting parties, an order directing parties to maintain *status-quo* was passed. Thereafter, on 24.04.2025, arguments were submitted on the second appeal based on the substantial questions of law, which were placed on record on 23.04.2025. On the same date, arguments were submitted on CA No.13969/2018 (which was filed on 06.11.2018 alongwith the second appeal) and CA No. 4553/2025 dated 21.04.2025.

5. It is pertinent to note that although the second appeal was filed in November 2018 and it remained pending, however, no notices were issued on substantial questions of Law. The Second Appeal was listed on several dates and it was adjourned for one or the other reason.

6. The controversy is briefly stated thus. The appellant Trust

and its members are the original defendants and respondents Trust and its members are original plaintiffs. The respondents filed RCS No.273/2005 seeking relief of recovery of possession alongwith accounts of income, recovery of money and for fixation of standard rent, alleging breach of terms and conditions of lease deed dated 01.07.1992 and termination of lease by notice dated 21.08.2004. The suit was contested on merits and by judgment and decree dated 15.03.2017, the Regular Civil Suit was dismissed. The Trial Court recorded findings that there was no breach of terms of the lease. After considering clause 4 of the lease deed authorising the lessee to make construction after getting the land converted to non agricultural use and after considering the permissions granted by the Joint Commissioner and Charity Commissioner authorising the lessee to avail loan, the Trial Court recorded findings that there was no breach of terms and conditions of the lease. The Trial Court also recorded findings that construction of the building was on the basis of the permissions by the competent authorities.

7. Feeling aggrieved by the judgment and decree of dismissal of suit, the original plaintiffs filed RCA No.118/2017. By judgment and

decree dated 10.10.2018, the Court of District Judge – 6, Ahmednagar allowed the appeal and decreed the suit. The First Appellate Court recorded the findings that the defendants / Trust had committed breach of terms and conditions and that the notice of termination of lease dated 21.08.2004 was legal and valid. Based on these findings, the plaintiffs Trust was held entitled for possession and mesne profits.

8. By way of instant appeal, the appellants have raised challenge to the judgment and decree dated 10.10.2018 passed in Regular Civil Appeal No.118/2017 .

9. Heard learned Senior Advocate Mr.Dhorde for the appellants. His main thrust of the arguments is that the findings of the Appellate Court regarding alleged breach of conditions of lease are perverse. He submits that there are no pleadings, no issues and no evidence about breach of conditions of lease. He also argues that there is no evidence to demonstrate that the lessee has challenged the title of the owner.

10. Per contra, the learned Advocate Mr.Gholap for respondent

Nos. 1, 4 and 5, who appears on caveat, submits that the breach of conditions of lease is established in view of the permission having been obtained for conversion of use for non agricultural use and in view of the constructions made on the land. He submits that there was a valid notice of termination of the lease deed, which although mentioned the period of 3 months, however since the suit was filed after about one year no defect can be found with the notice. Relying on Section 111(g) (2) of the Transfer of Property Act, he submits that the lessee has claimed title in himself and therefore the suit was liable to be decreed. He further submits that there is no substantial question of law as argued. Additionally he submits that the decree for possession is already executed pursuant to orders passed in the execution case and therefore the instant second appeal needs to be dismissed.

11. Having considered the submissions advanced by the learned Senior Advocate for the appellants, I find that few crucial issues needs consideration in this appeal u/s 100 of the CPC. The issues about perversity of findings of the Appellate Court with respect to breach of conditions of lease, challenge to the ownership of the lessor and the legality of the notice of termination needs to be considered in the

backdrop of foundation of these issues in the pleadings and evidence.

12. In view of this, issue notice to the respondents on following substantial questions of Law :-

[1] Whether the learned Lower Appellate Court has committed grave error in law by exceeding jurisdiction by allowing appeal in absence of pleadings by granting decree of possession in the absence of plea of denial of title of plaintiff in suit ?

[2] Whether the notice of termination of tenancy dated 21.08.2004 before filing the suit is invalid and contrary to the terms and conditions of the mortgage deed executed by respondent / plaintiffs ?

[3] Whether the judgment and decree of first appellate court militates with provisions of Section 111 of the Transfer of Property Act, in absence of specific disclaimer of landlords title ?

[4] Whether the impugned decree is hit by variance between the pleadings and proof and whether relief can be granted at variance with cause of action pleaded in suit ?

[5] Whether the impugned decree of possession is beyond pleadings and in absence of cause of action ?

[6] Whether impugned decree is perverse and suffers from lack

of foundation in pleadings and evidence ?

13. The notice is returnable on 01.07.2025. Advocate Mr.Gholap waives service of notice for respondent Nos. 1, 4 and 5.

14. The learned Advocate for the appellants states that he wants to delete the names of respondent Nos. 7, 8 and 9 and that respondent Nos. 2, 3 and 6 have expired. Necessary amendment be carried out in cause title.

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CIVIL APPLICATION NO.4553 OF 2025**

15. Both these civil applications are filed by the appellants seeking interim reliefs. Respondent Nos. 1, 4 and 5 have filed reply dated 23.04.2025 to both these civil applications. Since both these civil applications are filed by the applicants seeking interim reliefs and since identical submissions are advanced, both the civil applications are heard and common order is passed thereon.

16. CA No.13969/2018 is filed on 06.11.2018 seeking following prayers :-

“A. Call record and proceeding of the matter.

B. Pending hearing and final disposal of the second appeal be pleased to grant stay to the judgment and order dated 10.10.2018 passed by the learned District Judge-6, Ahmednagar in Regular Civil Appeal No.118/2017.

C. Pending hearing and final disposal of the second appeal be pleased to direct the original plaintiffs to maintain grant status-quo in respect of land bearing S.No.144 admeasuring 6H 52R situated at Village Nagapur, Taluka and Dist. Ahmednagar.

D. Grant Ad-interim relief in terms of prayer clause "B" and "C" as above.

E. Award costs to the applicants.

F. Pass any such other order which this Hon'ble Court deems fit and proper in the peculiar facts and circumstances of the case."

17. CA No.4553/2025 is filed on 21.04.2025 seeking following reliefs :-

"B. To call the record and proceedings of Regular Darkhast No.49/2018 pending before Ld. C.J.S.D. Ahmednagar.

C. To restrain the respondents/decreed holders from demolishing and causing damage to the buildings constructed by applicants for charitable and educational purpose during the pendency of this Second Appeal and Civil Application.

D. To hold that the entire illegal activities carried out by the non applicants from 17.04.2025 and onwards is illegal and further hold that the applicants are entitled for restoration of suit property forthwith."

18. It is pertinent to note that there is no specific prayer in any of the civil applications seeking stay to the decree of the Appellate Court. The learned Advocate for the applicants submits that the prayer for stay to decree may be considered as implicit in prayer clause “B” of CA No.13969/2018.

19. In support of the applications, Advocate Dhorde, learned Senior Counsel for the applicants submits that the impugned judgment and decree passed by the Appellate Court is perverse since the same is passed without there being any pleadings, issues and evidence on the point of alleged breach of conditions of lease deed. He further submits that on 26.11.2018, a statement in the nature of undertaking of not executing the decree was made by the learned Advocate for respondent No.1, 2, 4 and 6, which was continued from time to time. He submits that despite the statement, an execution case bearing RD No.49/2018 was filed in which, ex-parte orders came to be passed on application at Exh.44 seeking warrant of possession and application at Exh.50 seeking grant of police assistance. He submits that the possession of the suit property is taken by the decree holders.

He further submits that there are 8 buildings standing on the suit property, on which there are hostels and students are residing. He submits that the instant appeal u/s 100 of the CPC was filed and it was pending consideration and therefore by way of interim relief, the execution and implementation of the impugned judgment and decree needs to be stayed as prayed by the civil applications.

20. Per contra, Advocate Mr.Gholap learned Counsel for the respondents vehemently submits that the applications are liable to be dismissed. His primary submission is that the decree for possession stands executed pursuant to warrant of possession issued by the Executing Court. By inviting attention to the documents of panchanama dated 19.04.2025, bailiff report dated 19.04.2025, possession receipt (कब्जेपावजी) dated 19.04.2025 and जुम्मेपत्र (19.04.2025), he submits that the possession of the suit property is handed over to the respondents and there is no question of any interim relief as prayed for. He also submits that a separate notarised document in the nature of possession receipt is also executed by some of the trustees mentioned therein that they have got their articles. These documents are filed alongwith his reply which are annexed as Exh.R-1 and R-2. He further

submits that in the execution case, RD No.49/2019, the decree holders had filed an application under Order XXI Rule 35 of the CPC at Exh.44 seeking warrant of possession to which the judgment debtors (appellants herein) did not file any say and the Court had passed order dated 10.01.2025, by which their application was allowed. He further submits that a separate application seeking police aid was also filed vide Exh.50, dated 20.02.2025, to which the judgment debtors/appellants failed to submit any say. He, therefore, submits that the allegations of the appellants that the orders on Exh.44 and 50 are obtained behind their back are baseless. As regards the statement in the nature of undertaking, he submits that although initially the statement was made on behalf of respondent Nos. 1, 2, 4 and 6, however, the same operated only till the next assigned date of the matter and no statement was made after 10.04.2024. He also submits that even after the application for warrant of possession (Exh.44) was filed on 04.11.2024, the appellants has not obtained any orders even though the second appeal was listed before this Court on 09.12.2024 and thus appellants chose not to file any reply to Exhs.44 and 50 or to obtain any interim relief.

21. In this regard, the learned Advocate for the applicants submits that the application at Exh.44 was not served upon the judgment debtors and therefore no say was filed.

22. Having considered the rival contentions of the parties, it has to be noted that the Second Appeal u/s 100 of the CPC is pending and by order passed today, notices on substantial questions of law are issued. At the same time, it has to be noted that the decree for possession stands executed, as can be seen from the documents vide Exh.R-1 filed on record by the respondents. Even in the Civil Application No.4453/2025, the appellants have stated that possession is taken from them and the buildings standing thereon are being demolished. Considering the rival contentions of the parties and the developments as reflected from the documents particularly the documents vide Exh.R-1 of panchnama dated 19.04.2025, bailiff report, possession receipt etc., I am of the opinion that no interim relief in terms of prayer clause B of CA No.13969/2018 can be granted at this stage. In view of the fact that the Second Appeal is pending and notices on Substantial Questions of Law are issued, in the interest of justice, only relief as claimed vide prayer clause 'C' in CA No.

13969/2018 directing the parties to maintain status-quo as on today in respect of suit land is hereby granted. As regards the relief claimed vide prayer clause 'C' of the civil application No.4553/2025 is concerned, the issue regarding the demolition or damage to the buildings is mentioned only in the civil application and it is a disputed question of fact which cannot be considered at this stage. However, in view of the interim relief granted in terms of prayer clause 'C' of CA No.13969/2018, no specific orders in that regard need to be separately passed. As regards prayer clause 'D' seeking restoration of the possession, in view of the fact that the decree for possession stands executed pursuant to orders passed in execution case, no case is made out to seek this relief at this stage.

23. Civil applications are accordingly disposed of.

24. Civil Application No.5063/2025 for intervention is filed by a person who was not party to the civil suit or Regular Civil Appeal, and the same needs to be considered at the stage of admission hearing.

(PRAFULLA S. KHUBALKAR, J.)