

ORDER BELOW EXH.4
IN CIVIL APPEAL NO. 247/2020

Being dissatisfied and aggrieved by the judgment dt. 17.10.2020 passed by the Civil Judge Junior Division, Saswad in Regular Civil Suit No. 186/2017, the defendant has filed present appeal.

2] By the present application the appellant/original defendant has prayed for stay of proceeding/execution of decree till disposal of an appeal.

3] The respondent/original plaintiff has strongly opposed the application vide reply below Exh.26. Perused application and reply. Perused documents filed on record by both the parties.

4] Heard learned Counsels for both the parties.

5] The principal submission of the learned counsel for the appellant is that the learned Trial Court has delivered the judgment in contravention of SOP approved by the Hon'ble High Court. The learned Counsel for the appellant emphasized upon Clause 3 of the common guidelines of the SOP which states that "the Judicial Officers may not pass any adverse order owing to the absence of parties to the proceedings". According to the learned Counsel for the appellant, the trial Court has delivered the judgment in absence of the appellant/original defendant in

the lock-down period.

6] It is seen from the record/roznama that appellant/original defendant came to be added to the suit vide order dt. 21.02.2019. Thereafter, the suit was posted for filing written statement by the defendant. On failure of the defendant, the learned trial Court proceeded without written statement against the defendant vide order dt. 24.09.2019. Thereafter, plaintiff adduced her evidence. The defendant failed to cross examine the plaintiff. The plaintiff closed her evidence on 15.02.2020. Due to previous and continuous absence of the defendant, the evidence came to be closed vide order dt. 27.02.2020. The nationwide lock-down commenced from 23.03.2020. Roznama of the suit shows that since 24.03.2020 suit was posted for orders and the judgment was delivered on 17.10.2020.

7] By Clause 3 of the common guidelines in SOP approved by the Hon'ble High Court, the trial Courts were directed not to pass any adverse orders owing to absence of parties. The SOP came into effect from 08.06.2020. Clause 5 of the common guidelines states that "the Judicial Officers may give priority to the cases which are posted for delivery of Judgments". As stated here-in-above, the suit was pending for orders since 24.03.2020. Clause 3 of the guidelines states about the absence of parties and not the absence of advocates. The appellant has purposefully kept silence about his advocate. There is nothing on

record to show that the advocate of appellant/original defendant was prevented from attending the Court or advancing the argument. Record clearly shows that the appellant/defendant was proceeded without his written statement on 24.09.2019, the evidence and argument of plaintiff was completed on 27.02.2020, defendant and his advocate failed to advance argument prior to lock-down and that the case was pending for order during lock-down. The SOP came into operation since 08.06.2020 and the judgment was delivered on 17.10.2020. As such, the judgment delivered by the learned trial Court is perfectly in consonance with the guidelines approved by the Hon'ble High Court. Therefore, the submission made by the learned Counsel for the appellant that the judgment of the learned trial Court is contrary to SOP, is misconceived.

8] The learned Counsel for the appellant has placed his reliance on Siai Sinha V/s. Shivadhari Sinha and ors, AIR 1972 Patna 81. The learned Counsel further cited *Shri Labh Chand Jain V/s. Shri. Sujan Chand Jain, and Dev Chandar Sood V/s. H.L.Sood*. However, there is no authorised mode of citation to these two authorities. There is no dispute about the proposition of law that even if the defendant is proceeded without written statement, he can take part in the hearing of the suit. But it all depends on fact and circumstances of each case.

9] The appellant has prayed for stay to proceeding/execution of decree. As per order 41 Rule 5 of the

Code of Civil Procedure, the Appellate Court may stay the proceeding/execution of decree, when it is established that the party praying for stay may suffer irreparable loss and injury, if stay is not granted.

10] The record shows that plaintiff filed suit for declaration of civil death of Ramdas Sadashiv Band under Section 108 of the Evidence Act alleging that she is wife of Ramdas and Ramdas was unheard since 2001. Appellant herein moved an application under Order 1 Rule 10 of Code of Civil Procedure for adding him to the suit. The appellant in his application claimed that he is real nephew of Ramdas Band and that plaintiff is no way related to Ramdas. It is seen that brother of the appellant has filed RCS 103/2018 for declaration of civil death of Ramdas Band, being unheard since 1992. The appellant has himself stated in an application filed before Talathi, Singapur that he has filed an application for Heirship Certificate being successor of Ramdas Band before Saswad Court. It seems that material dispute between the parties is about heirship of Ramdas Band. There is no dispute about Ramdas Band being unheard since more than 7 years of the institution of the suit. The decree of the learned trial Court declares that Ramdas Sadahiv Band is dead. There is no question of execution of this decree. The decree of the learned trial Court does not declare succession or heirship of Ramdas Band. When the appellant himself has claimed heirship certificate in another proceeding alleging civil death of Ramdas Band, the staying of judgment and decree of the

learned trial Court will be inconsequential.

11] The learned Counsel for the appellant submitted that the respondent has moved an application for mutation before the Talathi taking disadvantage of the decree of the learned trial Court, and therefore, it is necessary to order that no mutation be effected on the basis of the judgment of the learned trial Court. As already stated here-in-above, the decree of the learned trial Court does not declare succession or heirship of Ramdas Band. The mutation proceeding before Talathi is a different proceeding and is not covered under the present suit/appeal. The appellant has every opportunity to oppose the mutation before Talathi and to establish his heirship in separate proceeding already initiated by him.

12] Thus, considering the over all material available on record and the declaratory decree of the learned trial Court, no irreparable loss or injury will be caused to the appellant if the decree is not stayed and that there is nothing to establish that staying of decree is necessary. Hence, the order.

Order

Application is rejected.

Pune.
Date :01.01.2021

(Tushar Aglawe)
Adhoc District Judge-7

Pune

Certificate

I affirm that the contents of this P.D.F. file order are same word for word as per original judgment.

Name of Steno : Mrs.Bankapure V.N. Steno- Grade-I,

Name of Court : Shri. Tushar Aglawe
Adhoc District Judge -7, Pune

Order on Date : 01.01.2021

Order signed by PO on. - 01.01.2021

Order uploaded on – 01.01.2021

