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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1557 OF 2015

Indrabai Ambadas Pawar

PETITIONER

VERSUS

Shaikh Gulam Hussain Sk Noormiya & others

RESPONDENTS

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Mr. Chaitanya V. Dharurkar, Advocate for the petitioner

Mr. G. K. Naik-Thigale, Adv for R-1, 2A to 2D, 3A & 3D

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 12th JUNE, 2015

ORDER :

1. The petitioner purports to have been aggrieved by an order of restraint being placed on him in the order of remand passed by appellate court in regular civil appeal No. 3 of 2008.

2. Learned advocate for the petitioner submits that the petitioner is not aggrieved by the remand order, however by the order of restraint.

3. The indisputable position as it emerges is that the appeal has been decided by the appellate court remanding the matter and restraint has been placed as a part of the order of the remand.

4. In such a case, I do not think it would be appropriate to

entertain the writ petition wherein the code prescribes procedure and provides for an appeal from an order of remand. The order of restraint is part of the order of remand and it would be open for the petitioner to challenge said order to the extent up to which he feels that he is aggrieved by.

5. Rule (u) of Order XLIII of the Code of Civil Procedure reads thus -

“1. Appeals from orders – An appeal shall lie from the following orders under the provisions of section 104, namely -

(a)

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(u) an order under rule 23 or rule 23-A of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court”

6. In view of the same, the petitioner may make an approach under an appeal from order before proper court. The time consumed during pendency of this writ petition would be a matter to be considered, while it comes to delay condonation in the appeal from order.

7. Writ petition stands disposed of.

[SUNIL P. DESHMUKH, J.]