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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.815 OF 2015

Shaikh Majeedullah Darkatullah.

..Petitioner

-Versus-

Shaikh Khalillulah and others.

..Respondents

.....

Mr.Shrikant V. Adwant, Advocate for the Petitioner.

Mr.P.R.Katneshwarkar a/w Mr.Waseemulla, Advocates for the Respondent Nos.1 and 2.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 16th February, 2015

Per Court:

1 Mr.Adwant, learned Advocate appearing for the Petitioner, submits that the contesting Respondent Nos.1 and 2, who are contesting Defendants before the Trial Court in Special Civil Suit No.293/2006, are before this Court. The Respondent Nos.2 to 25, who are the original Defendant Nos.2 to 25, are non contesting parties. As such, they need not be heard, is the submission.

2 Having heard Mr.Adwant, learned Advocate appearing for the Petitioner and Mr.Katneshwarkar, learned Advocate appearing for the Respondent Nos.1 and 2, the issue turns upon an order passed by the learned Division Bench of this Court in First Appeal No.983/2012 on 02.08.2012. The relevant paragraphs 3, 4, 5, 6 and 7 are as under:-

- “3. Appellant is the original defendant no.1 and respondent no.1 is the original plaintiff. The suit for partition and separate possession filed by respondent no.1 has been decreed. According to the appellant / defendant no.1, the decree is passed behind his back as the entire controversy was compromised and the compromise was tendered before the trial court. In view of that compromise, it was not necessary for the appellant / defendant no.1 to attend the court. Without any notice to him, trial court accepted request made by the plaintiff (Respondent no.1) and ignored compromise and suit has been decreed.
4. On the last occasion, we found that these basic facts were not in dispute.
5. Hence, a need for remand was felt.
6. Today, as all contesting parties are before the Court, we set aside the judgment and decree dated 7-3-2012 in Special Civil Suit No.1/2011 and restore it back to the file of Civil Judge (Senior Division), Corporation Court, Aurangabad, for its further trial in accordance with law.
7. Copy of application, if any, moved by the plaintiff for ignoring or setting aside the compromise shall be served upon the present appellant and after obtaining his reply thereto, the trial court shall proceed further in the matter, in accordance with law.”

3 It is in pursuance to the liberty granted by the learned Division Bench of this Court in paragraph 7 as reproduced above that the Respondent No.1, who is the original Plaintiff, moved an application praying for setting aside of the alleged Compromise Deed dated 20.02.2008. Pursuant thereto, the learned Trial Court came to a conclusion that the parties will have to lead evidence in relation to the said Compromise Deed dated 20.02.2008. It is by virtue of the said order dated 01.10.2013 passed below Exhibit-137 that the parties were directed

to lead evidence.

4 On 16.10.2014 i.e. practically after 13 months of the order passed below Exhibit-137 that the original Plaintiff moved an application Exhibit-253 praying for recalling of the order dated 01.10.2013. By the impugned order dated 10.11.2014 the application (Exhibit-253) was allowed and the order below Exhibit-137 dated 01.10.2013 was recalled.

5 I have considered the grievance of the Petitioner as well as the Respondent Nos.1 and 2. The issue is as to whether, the Trial Court was vested with the jurisdiction to recall an order dated 01.10.2013 on an application filed on 16.10.2014, which is practically after 13 months. The issue is as to the effect of the alleged compromise deed on the Special Civil Suit. In the event, the compromise deed is proved to be legal, lawful and enforceable, the Trial Court will have to decree the said suit in terms of the compromise deed. In the event, the said compromise deed is held to be not genuine or unenforceable, the Trial Court would be under an obligation to decide the entire suit.

6 In this peculiar situation, I do not find that the Trial Court was justified in passing the impugned order. Nevertheless, ends of justice would be met by directing the Petitioner and the Respondent Nos.1 and 2,

who are contesting parties and such other litigating parties, who may desire to lead evidence on an application for setting aside the compromise deed dated 20.02.2008, to record their evidence.

7 Since the learned Division Bench of this Court had imposed a time frame on the Trial Court to decide the Special Civil Suit, I am inclined to direct the parties to complete the recording of evidence as expeditiously as possible and preferably within a period of 60 days from today. Upon conclusion of the recording of oral evidence, the Trial Court shall decide the application Exhibit-137 within a period of THREE WEEKS therefrom in accordance with law.

8 Needless to state, the contentions of the litigating parties are kept open for the Trial Court to consider on their own merits. The Trial Court shall not be influenced by any observations made by it in the impugned order dated 10.11.2014 or by this Court in the order passed today.

9 With the above directions, the Writ Petition is partly allowed. No order as to costs.

(RAVINDRA V. GHUGE, J.)