

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL APPLICATION NO.1954 OF 2014

IN

WRIT PETITION NO.5870 OF 2014

Shri. Navnath Vitthal Manjare & Anr. Applicants

Vs.

Shri. Arjun Rama Mali & Ors. Respondents

Mr. S.N. Salunke i/by Mr. Ashok Manik Misal, Advocate for the applicants.

Mr. Ajay A. Joshi, Advocate for respondent no.1.
Mr. Sandesh Patil, Advocate for respondent no.3.

Coram : Smt. R.P. SondurBaldota, J.

Date : 10th August, 2015

P.C.

1 The applicants are the original respondents to the petition, who on receipt of notice of the petition had appeared before the Court through their advocate. By the order dtd.11th July, 2014, a statement was made before the Court on behalf of both the sides that since the trial in the suit had already commenced and the petitioner had already filed affidavit of examination-in-chief, it was desirable that the suit be disposed off expeditiously. Therefore by consent of the parties, the order impugned in the petition was set aside and direction was given to the trial court to dispose off the suit as

expeditiously as possible. About a the month thereafter i.e. 4th August, 2014, the respondent filed the present application for recalling the order dtd.11th July, 2014 and for restoration of the petition.

2 The applicants allege in the application that the statement made by the advocate representing him in the court on the date of the order was not on the instructions of the applicants. They claim that they never consented for allowing of the petition and proceeding with the trial in the suit. Since the applicants made allegations against their own advocate, direction was given to them to implead the learned advocate as respondent to the application. Accordingly, the application was amended. Mr. Shah, who had appeared for the applicants on the relevant day has filed detailed affidavit narrating all the events that had led to making of the statement on behalf of the applicants. The affidavit-in-rejoinder filed by the applicants baldly denies the statements made in the affidavit of the learned advocate. There is no specific denial to the statements of substance made in the reply. Therefore the denial of the applicants cannot be treated as denials. Thus, there is no case whatsoever made out by the applicants for setting aside the order dtd.11th July, 2014. Hence, the Civil Application is dismissed.

(Smt. R.P. SondurBaldota, J.)