

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2920 OF 2015

Lahu N. Kadav and anr.

.. Petitioners.

vs.

Denis C. Lobo and ors.

.. Respondents.

Mr. R.S. Apte, Senior Advocate i/b Mr. Saurabh Oka for the
Petitioners.

Mr. Onkar Gupta a/w. Mr. Nilesh Pawar i/b G.P. Law & Associates for
Respondent No.1.

CORAM : M. S. SONAK, J.

DATE : 20 MARCH, 2015

P.C. :-

1] Learned senior advocate for the petitioners seeks leave to delete respondent Nos.2 to 10 for the purposes of the present petition. Leave is granted. Amendment to be carried out forthwith.

2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

3] This petition is directed against the order dated 23 February 2015 made by the learned Joint Civil Judge, Senior Division, Panvel, on an application made by the petitioner-original defendant Nos.2 and 5 in Special Civil Suit No.420 of 2009.

4] The petitioners, by their application marked at Exhibit-145 had applied for deletion of paragraphs 24 to 34 of the affidavit in evidence filed by the respondent-original plaintiff, on the ground that the same were not backed by any pleadings. By the impugned

order, such application has been rejected.

5] Perusal of the impugned order would indicate that the rejection is not really on merits, but the learned Civil Judge has postponed the consideration of the application.

6] The impugned order merely makes reference to certain legal provisions and extracts from the decision of this Court and thereafter abruptly concludes the relevancy of the facts and whether the contents of paragraphs 24 to 34 of affidavit are beyond pleadings or not, can be considered afterwards. This is not a satisfactory manner of consideration of the application made under Exhibit 145.

7] Accordingly, the impugned order dated 23 February 2015 is set aside. The learned Civil Judge is directed to consider afresh the application at Exhibit-145, as expeditiously as possible and in any case within a period of two weeks from the production of an authenticated copy of this order.

8] It is made clear that this Court has not expressed any opinion on the merits of the matter and accordingly it shall be open to the learned Civil Judge to decide the said application in accordance with law.

9] Parties are due to appear before the learned Civil Judge on 23 March 2015 and shall produce an authenticated copy of this order before the said Court on the said date or soon thereafter.

10] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

11] Parties to act upon an authenticated copy of this order.

(M. S. SONAK, J.)

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