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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4708 OF 2013

Rajkumar Chaganlal Shah

.. Petitioner

Vs.

Sou.Gunmala Chandrakant Shah and others

.. Respondents

Mr.Surel S.Shah, Advocate for the Petitioner.

Mr.Kishor V.Tembe, Advocate for the Respondents No.1, 2, 4, 6A to 6F, 7, 8A & 9 to 12.

CORAM : R. G. KETKAR, J.

DATE : 01st JULY, 2015

P.C. :

. Heard Mr.Surel S.Shah, learned Counsel for the petitioner and Mr. Kishor V.Tembe, learned Counsel for respondents No. 1, 2, 4, 6A to 6F, 7, 8A, 9 to 12. Mr.Shah states that rest of the respondents are duly served. However, none appears for them.

2. By this petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 26/04/2005 passed by the learned 3rd Additional District Judge, Baramati in Regular Civil Appeal No. 130 of 2002. By that order, the learned District Judge dismissed the Appeal on the ground that sufficient process fee was not paid since 16/01/2002. Mr.Tembe has tendered communication addressed by the respondents No. 1, 2, 4, 6A to 6F, 7, 8A, 9 to 12 for consenting to set aside the impugned order on

condition that the Appeal is decided within a fixed time limit not exceeding 2 months. Communication is taken on record and marked 'X' for identification.

3. Mr.Tembe assures that on 13/07/2015, respondents No. 1, 2, 4, 6A to 6F, 7, 8A, 9 to 12 will appear before the learned District Judge seized of the Appeal and for that purpose, fresh notice need not be issued to them. Mr.Shah assures that the petitioner will serve advance copy of the Appeal proceedings on the learned Counsel appearing for the respondents No. 1, 2, 4, 6A to 6F, 7, 8A, 9 to 12.

4. Mr.Shah further seeks 2 weeks time for effecting service on rest of the respondents in Appeal and assures that during that period, service will be effected on rest of the respondents.

5. In view thereof, Petition is disposed of in the following terms.

- i) The impugned order dated 26/04/2005 passed by the learned 3rd Additional District Judge, Baramati in Regular Civil Appeal No. 130 of 2002. is set aside and Regular civil Appeal No. 130 of 2002 is restored to the file of the Court of Additional District Judge, Baramati.
- ii) The petitioner and respondents No.1, 2, 4, 6A to 6F, 7, 8A, 9 to 12 will appear before the learned Additional District Judge, Baramati on 13/07/2015 for which no fresh notice be issued to them.

- iii) The petitioner shall serve rest of the respondents within 2 weeks from today.
- iv) Leave to bring heirs and legal representatives of respondents No. 5, 6 & 8 in the Appeal is granted. Amendment shall be carried out on 13/07/2015.
- v) The learned Additional District Judge is requested to decide the Appeal as expeditiously as possible and in any case within 3 months from today, subject to ensuring that all the respondents are duly served.

6. Statement made by Mr.Tambe which is recorded in Order dated 24/07/2013 shall continue during the pendency of the Appeal.

7. All the parties including learned Additional District Judge shall act upon authenticated copy of this order. Rule is made absolute in the aforesaid terms.

(R. G. KETKAR, J.)