

IN THE HIGH COURT OF JUDICATURE AT MUMBAI  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.3930 OF 2015  
WITH  
CIVIL APPLICATION NO.3097 OF 2015

Pandharinath Sitaram Patil and another                      ...      Petitioners  
Vs.  
Venubai Abhimanyu Bhandari and another                      ...      Respondents

Mr. S. S. Deshmukh for Petitioners.  
Mr. J. M. Puranik for Respondent No.1.  
Mr. G. S. Godbole, Senior Advocate i/b. Mr. H. D. Patil for Respondent No.2.

**CORAM : R. G. KETKAR, J.**  
**DATE : DECEMBER 04, 2015**

**P.C. :**

Heard Mr. Deshmukh, learned Counsel for petitioners, Mr. Puranik, learned Counsel for respondent No.1 and Mr. Godbole, learned Senior Counsel for respondent No.2. Rule. Learned Counsel appearing for respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing. Since name of petitioner No.2 is already deleted from the Title of Appeal in the District Court, the name of petitioner No. 2 is deleted.

2. By this Petition under Article 227 of the Constitution of India, Petitioners have challenged the judgments and order dated 04.03.2015 passed by the learned Ad-hoc District Judge-2 Kalyan below exhibits - 33 & 47 in Regular Civil Appeal No. 120 of 2006 thereby allowing application at exhibit - 33 filed by the respondent No.2 and deleting the name of petitioner No. 1 herein from the array of parties in the said Appeal and dismissing application exhibit - 47 filed by petitioner No.1 for recalling the judgment and order dated 16.12.2013 passed below

exhibit - 24 in the said Appeal.

3. Application exhibit - 47 was filed by the petitioner No.1 by claiming that respondent No. 2 had allegedly played fraud on the Court by producing fabricated documents showing the death of original appellant No.2 in the Appeal. That application is dismissed by the Appellate Court essentially on the ground that the earlier order below exhibit - 24 had been confirmed by this Court by dismissing Writ Petition No. 8619 of 2014. As a consequence of deletion of name of original appellant No.2, the learned trial Judge has passed impugned order on exhibit - 33 allowing the same.

4. Since petitioner No.1 has raised a plea of fraud, which had not been raised earlier while defending application at exhibit - 24 filed by respondent No.2 herein or in Writ Petition No. 8619 of 2014, the learned trial Judge ought to have given opportunity to petitioner No.1 to prove such plea while considering the application at exhibit - 47 by recording a specific finding on the plea of fraud. Since this exercise is not carried out, the impugned orders are quashed and set aside. Applications at Exhibits - 33 and 47, are restored to file for de novo consideration. The learned trial Judge shall give due opportunity to petitioner No.1 to lead evidence to establish the plea of alleged fraud and the plea that original appellant No.2 is allegedly alive, and give opportunity to Respondent No.2 to counter the said contentions of Petitioner No.1. All contentions of Respondent No.2 including plea of merger in view of dismissal of Writ Petition No. 8619 of 2014 are kept open for consideration by the Appellate Court. It is made clear that there is no expression of opinion on the merits of the controversy involved in Applications at exhibits - 33 and 47.

5. Learned Counsel for the parties state that the next date of hearing before the District Court is 14.12.2015. The learned District Judge is requested to dispose of the Applications at exhibits-33 and 47 as expeditiously as possible and in any case, within two months from the date of appearance of the parties i.e. 14.12.2015.

6. Rule is partly made absolute in the aforesaid terms with no order as to costs.

7. In view of the disposal of the Petition, nothing survives in Civil Application No.3097 of 2015 and the same is disposed of accordingly.

**(R. G. KETKAR, J.)**

*Minal Parab*