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

WRIT PETITION NO. 8643 OF 2014

Progressive Education Society,
(through its Secretary),
Mr. Shamkant S. Deshmukh.

... Petitioner.

V/s.

Mr. Dilipsingh Gulabsingh Pardeshi & Ors. ... Respondents.

Mr. S.V. Pitre for the Petitioner.
Mr. Subhash Langote i/b. V.A. Madane for Respondent 1.
Mr. A.R. Metkari, AGP for Respondents 2 & 3.

CORAM : N.M. JAMDAR, J.

DATE : 21 NOVEMBER, 2015.

ORAL ORDER :-

The Petitioner challenges the order passed by the School Tribunal dated 26 June 2014 rejecting the application filed by the Petitioner objecting to the maintainability of the application filed by the Respondent No.1 for restoration of the Appeal.

2. The Respondent No.1 filed an Appeal bearing No. 44 of 2009 in the School Tribunal, Pune, challenging the order of dismissal from service. The Respondent No.1 filed a pursis on 30 April 2011 that he does not want to prosecute the Appeal. By

order passed of the same date, the School Tribunal, after noting the presence of the Respondent No.1 and his Advocate and perusing the pursis disposed off the Appeal for want of prosecution. The Respondent No.1 thereafter filed an application bearing M.C.A. No. 26 of 2011 on 26 August 2011 for recalling the order allowing withdrawal of the Appeal. On 4 November 2011, the Petitioner filed an application below Exhibit 14 contending that the application filed by the Respondent No.1 is not maintainable. There were certain proceedings between the parties as regard the condonation of delay in the application and thereafter, by the impugned order dated 22 June 2012, the application filed by the Petitioner was rejected.

3. The learned Counsel for the Petitioner submitted that the application filed by the Respondent No.1 was not maintainable, having withdrawn the appeal on his own accord. He submitted that the reasons given by the Respondent No.1 for withdrawal of the Appeal are not germane and therefore, the application filed by the Respondent No.1 is not maintainable. The learned Counsel for the Respondent No.1 supported the impugned order.

4. The Tribunal has held that the application filed by the Respondent No.1 is maintainable and whether it should be allowed or not on merits will be considered at the time of the hearing of the restoration application. It cannot be said that the

Respondent No.1 is precluded even from filing an application. Whether it should be allowed or not would be an another issue. All that the Tribunal has done is to hold that the application is maintainable and there is no decision on the merits of the application. Therefore, at this stage, it is not necessary to interfere with the impugned order. It will be open to the Petitioner as well as the Respondents to put forth their case on merits as to whether the Respondent No.1 is entitled to succeed in his application. Therefore, if all the contentions of the parties are kept open, then no further orders are required to be passed in this Petition. Accordingly, by keeping all the contentions of the parties open, the Writ Petition is disposed off.

5. The parties will appear before the Tribunal on 5 December 2015 and the Tribunal will no doubt, considering the narrow controversy involved and the fact that the Respondent No.1 has retired from service, will give priority to the hearing of the application, subject to earlier time bound commitments.

(N.M. JAMDAR, J.)