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

**FIRST APPEAL NO.375 OF 2015  
WITH  
CIVIL APPLICATION NO.4285 OF 2013  
WITH  
CIVIL APPLICATION NO.694 OF 2014**

Municipal Corporation of the City of Pune ...Appellant  
v/s.  
Indiraraje Bhairavsinh Ghorpade and Anr. ...Respondents.  
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Mr.Rajdeep S. Khadapkar, for the Appellant.  
Mr.Ashish Kamat i/b Crawford Bayley & Co., for the Respondents.  
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**CORAM: A. S. OKA &  
REVATI MOHITE DERE, JJ.**

**DATED : 5<sup>th</sup> AUGUST, 2015.**

P.C.

1. While hearing the application for stay, considering the grounds of challenge in the appeal and considering the nature of the impugned decree, this Court made a suggestion to the learned counsel appearing for the respondents that the suit can be ordered to be reheard after giving a fixed time to the appellant to file a written statement. The learned counsel appearing for the respondents on instructions states that the respondents have no objection for passing such an order of remand provided it is

ensured that the trial is concluded during the time fixed by this Court. He states that the respondents will co-operate with the Trial Court for early disposal of the suit.

2. In view of the aforesaid statements, we dispose of the appeal by passing the following order :-

**ORDER**

- (i) The impugned Judgment and Decree dated 14<sup>th</sup> December, 2012 is set aside and the Special Civil Suit No.272 of 2003 is restored to the file of the learned 5<sup>th</sup> Joint Civil Judge, Senior Division Pune ;
- (ii) We direct the appellant and the respondents to appear before the learned Trial Judge on 7<sup>th</sup> September, 2015 at 11.00 a.m for fixing the schedule of the hearing ;
- (iii) We make it clear that both the parties are not entitled to further notice of the date fixed by the Trial Court ;
- (iv) It will be open for the appellant to file a written statement on 7<sup>th</sup> September, 2015. We make it clear that no further time shall be granted to the appellant to file a written statement ;
- (v) After issues are settled, it will be open for the respondents to file supplementary affidavit in lieu of examination-in-chief of the

witness who is already examined. For that purpose it will be open for the respondents to recall the witness who is already examined ;

- (vi) It will also be open for the respondents to adduce additional evidence, both documentary and oral ;
- (vii) Needless to state that if a written statement is filed by the appellant, the witness who is already examined by the respondents shall be recalled to enable the Advocate for the appellant to cross examine the said witness ;
- (viii) We direct the Trial Court to conclude the recording of evidence and hearing of the arguments by 31<sup>st</sup> March, 2016 ;
- (ix) The Trial Court shall decide the suit on or before 30<sup>th</sup> April, 2016. We direct the parties to co-operate with the learned Trial Judge for expeditious disposal of the suit ;
- (x) In the event the Trial Court finds that the appellant is not co-operating for expeditious disposal of the suit, the Trial Court shall submit a report to the Registrar (Judicial-I) of this Court. As soon as such report is received, the appeal shall be placed before the appropriate Court for 'Directions' ;
- (xi) All contentions on merits are kept open ;

- (xii) The Appeal is disposed of on above terms. The appellant will be entitled to refund of Court Fees in accordance with the Rules ;
- (xiii) R&P of the suit along with writ of this order shall be transmitted to the Trial Court through a Special Messenger ;
- (xiv) Civil Application Nos.4285 of 2013 and 694 of 2014 do not survive the same are also disposed of.

**(REVATI MOHITE DERE,J.)**

**(A.S. OKA,J.)**