

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.6244 OF 2015

Santoshkumar s/o Swamidas Agrawal and anr.

-vs-

Ashwin s/o Wardhaman Golechha and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri R. M. Sharma, Advocate for petitioners.

Shri Ramprakash Gupta, respondent No.2 present in person.

CORAM : A.S.CHANDURKAR, J.

DATE : November 24, 2015

On the motion made by learned counsel for the petitioner, name of respondent No.1 is permitted to be deleted. Amendment be carried out forthwith.

The petitioners have filed pursis dated 24/11/2015 stating that challenge in the present writ petition is restricted to that part of the order allowing application below Exhibit-52.

Rule. Rule made returnable forthwith and heard finally.

The respondent No.2 filed an application below Exhibit-52 for intervention in Civil Suit No.45 of 2014. Reply to same was filed by the petitioners-original plaintiffs. The trial Court on 01/10/2015 rejected said application. The said applicant therefore filed an application for review below Exhibit-57. Reply to the same was also filed. By the impugned order, said application has been allowed and simultaneously the order passed below Exhibit-52 has been reviewed and

set aside.

Shri R. M. Sharma, learned counsel for the petitioners submitted that the application below Exhibit-52 has been allowed without considering the reply filed on behalf of the petitioner to said application. The order was passed on the same day while allowing the review application. He submits that procedure as contemplated by provisions of Order 47 Rule 8 of the Code of Civil Procedure has not been followed.

Shri R. Gupta, appearing in person as respondent No.2 supported the impugned order. According to him, the petitioners were heard before the said order came to be passed. Therefore there was no reason to interfere in the writ petition.

Perusal of the record indicates that by a common order below Exhibit-57, the review application was allowed and consequently earlier application below Exhibit-52 seeking intervention was also allowed. Paragraph 4 of the impugned order does not indicate consideration of the reply filed on behalf of present petitioners. Considering provisions of Order 47 Rule 8 of the Code of Civil Procedure, rehearing of application below Exhibit-52 is necessary. Hence the following order is passed :

- (i) Order dated 27/10/2015 allowing application below Exhibit-52 is set aside.
- (ii) Application below Exhibit-52 shall be reheard by the trial Court and shall be decided in accordance with law. The trial Court shall take into account order dated

10/04/2015 passed by the Supreme Court of India in S.L.P.No.365 of 2015 and decide the application expeditiously.

(iii) Rule is made absolute in aforesaid terms with no order as to costs.

JUDGE