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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4633 OF 2014

Shivaji Rejavi Dumbare

PETITIONER

VERSUS

Shivaji Sudam Suralkar & others

RESPONDENTS

.....

Mr. V. H. Dighe, Advocate for the petitioner

Mr. N. R. Bhavar, Advocate for respondent No.1 and 5 to 10

.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 20th APRIL, 2016

ORDER :

1. Learned advocate for the petitioner vehemently submits that neither the petitioner nor his advocate had been served with copy of the application for interim relief in Regular Civil Appeal No.5 of 2012 and that the order passed by the court on Exhibit-19 in the appeal is rendered an *ex-parte* order. Learned advocate makes a submission that there was no intention underlying to deal with the property and no particular advantage can be said to have been gained by the petitioner by ignoring the order deliberately, as alleged. No such thing has been placed on record to show that the petitioner has gained any special advantage by ignoring the order. Learned advocate contends that the advocate

of the petitioner in the appellate court is an age old person and in the circumstances, the petitioner was not aware of the order passed by the appellate court and the sale deed came to be executed being oblivious of the interim order passed by the appellate court.

2. Mr. Bhavar, learned advocate for the respondents, however, submits that contentions on behalf of the petitioner may not be in tune of the factual position. It is not the case that the order can be said to be *ex parte* for, it appears that the application can be said to have been served on the advocate of the petitioner, having regard to the observations as are appearing in the impugned order.

3. Learned advocate for the petitioner counters that the observations do show that there is no averment with regard to physical service on the advocate of the petitioner. It appears that it was merely submitted in the file and that is why it is recorded that no say had been filed. The observations occurred as the advocate of the petitioner was not aware of filing of such application.

4. However, in my estimate, without getting into such argumentative elements involved not leading to central purpose

of litigation in the matter, the situation can be salvaged, wherein the petitioner is facing contempt proceedings, by passing following order.

ORDER

- I. Application Exhibit-19 in regular civil appeal No.5 of 2012 be considered by the district court along with the appeal and for said purpose order dated 18th December, 2013 on Exhibit-19 in regular civil appeal No.5 of 2012 stands set aside.
 - II. Till the decision in the appeal and on Exhibit-19, contempt proceedings initiated against the petitioner should be put on hold.
5. Writ petition as such, stands disposed of.

[SUNIL P. DESHMUKH, J.]