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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.40 OF 2016

Prakash Manga Chaudhari
Age - 60 years, Occ - Retired
R/o Ram Nagar, Abhay Colony,
Dhule

APPLICANT

VERSUS

1. Vijaya Ghanshyam Birhade
Age - 45 years, Occ - Household
R/o Plot No.21, C. S. No.2/1
Gautam Co-op Housing Society,
Gandoor Road, Dhule
2. Sub-Registrar,
Co-operative Society, Dhule
3. The Chairman,
Gautam Gruh Nirman Co-op. Society,
Gandoor Road, Dhule
4. Nitin Ghanshyam Birhade
Age - 38 years, Occ - Nil
R/o Lane No.7, Near Wagkinar Masjid,
Moglai, Dhule
Taluka and District - Dhule

RESPONDENTS

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Mr. C. R. Deshpande, Advocate for the applicant
Mr. Amot Sawant h/f Mr. A. D. Sonar, Adv. for respondent No.1

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 25th AUGUST, 2016

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith and heard learned advocates for the appearing parties, finally with consent.

2. Learned advocate for the applicant strenuously contends that the order passed in the proceedings pursuant to Order IX, Rule 13 of the Civil Procedure Code is unsustainable, albeit, a Miscellaneous Civil Appeal has been carried therefrom, however, had failed on technicalities. He submits that in spite of service, present respondent No.1 had failed to cause appearance, apart from aforesaid he submits that a public notice had been issued and in the circumstances, the suit for specific performance came to be decreed.

3. Whereas, it appears to be the contention on behalf of respondent No.1 that the situation is properly taken care of in the observations as are appearing in paragraph No.17 of the judgment delivered by the first appellate court. It is further being submitted that there is no public notice issued at all and there is no substance in such contention.

4. Mr. Sawant, learned advocate for respondent No.1 on instructions states that the suit after restoration has progressed further and evidence is being led by the parties and the plaintiff is under cross examination by the defendants. Learned advocate for the applicant, however, is not in a position either to accept or dispute the submission.

5. However, looking at that the suit after restoration is now in progress, there is little point in going ahead with the civil revision application. In the scenario, the civil revision application is not being entertained and stands dismissed. Rule stands discharged.

6. Learned advocate for the applicant at this stage urges to leave it open for the applicant to take up such contentions as would be allowed, having regard to provisions of Order XLIII Rule 1-A of the Civil Procedure Code as has been observed by the first appellate court in paragraph No.9 of the judgment. As such, such a liberty is not affected by dismissal of present civil revision application.

[SUNIL P. DESHMUKH, J.]