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

WRIT PETITION NO. 9033 OF 2016

Mr. Shankar Dadu Patil

Since deceased through legal heirs.

... Petitioner.

V/s.

Smt. Vimal Maruti Sutar & Ors.

... Respondents.

Mr. Sandesh Patil i/b. Monica Kshirsagar for the Petitioner.

None for the Respondents.

CORAM : N.M. Jamdar, J.

20 September, 2016.

Oral Order :-

On 1 September 2016 following order was passed :-

“ Learned Counsel for the Petitioner states that the only ground on which the Petitioner seeks to present the case is that, merely because the suit is dismissed and not restored, the restoration of the counterclaim cannot be refused. He states that the Petitioner is ready to tender an unconditional apology for being not present when the suit and counterclaim were dismissed for default. He states, on instructions, that he is not pressing the various statements made by the Petitioner in the

application for restoration. In view of this categorical stand taken by the learned Counsel for the Petitioner on instructions and the assurance that an affidavit of unconditional apology for not remaining present on the date when the counterclaim was dismissed, will be filed within one week from today. Stand over to 20 September 2016, under the caption 'for Directions'. If such an affidavit is filed, further course of action will be decided in this petition."

2. This order was passed in the presence of the Petitioner, the learned Counsel took instructions and made a specific statement and sought time to file an affidavit. The learned Counsel for the Petitioner had made a statement on instructions from the Petitioner. The learned Counsel states that the Petitioner has now informed the Counsel for the Petitioner that he has not understood the question when it was put to him. This cannot be accepted. The Petitioner had sought time to tender an apology to the Civil Court wherein the counter-claim filed by the Petitioner was dismissed for default. It was also indicated in the order dated 1 September 2016 that if such an affidavit is filed, the Court will proceed further with the matter. No litigant has a vested right in seeking adjournments. The least that is expected from the party to tender an apology to the Court. It appears that the Petitioner does not wish to even tender such an apology, inspite of expressly agreeing to it earlier.

3. The learned Counsel for the Petitioner has sought discharge from the proceedings.

4. The order passed on 1 September 2016 is specific. Till date no apology has been tendered. It is informed, the Petitioner is present in the Court. It is clear from the statement made by the learned Counsel for the Petitioner that the Petitioner does not wish to tender such apology. The equity jurisdiction of this Court cannot be extended to such a litigant who does not even tender an apology to Court before seeking an equitable relief. No interference is warranted in the impugned order. The Writ Petition is accordingly rejected.

(N.M. Jamdar, J.)