

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

WRIT PETITION NO.5608 OF 2016

The Chairman,
Parshuram Education Society, Chiplun & Ors. .. Petitioners
Vs.
Sou. Chipalunkar Madhavi Sanjay & Ors. .. Respondents

Mr. S.R.Ganbavale, Advocate for the petitioners.
Mr. Madhav Jamdar, Advocate for the respondent no.1.
Mr. A.R.Metkari, AGP for the respondent no.2.

CORAM : R.D. DHANUKA, J.
DATE : 25th July 2016

P.C.

. By this Petition filed under Articles 226 and 227 of the Constitution of India, the Petitioner has impugned the order dated 26.9.2014 dismissing the application filed by the Petitioner herein inter-alia praying for dismissal of the Appeal No.41 of 13 filed by the Respondents herein.

2 The School Tribunal dismissed the application filed by the Petitioners by which the Petitioners had applied for dismissal of the appeal filed by the Respondents on the ground of want of jurisdiction. The learned counsel appearing for the Petitioners has not disputed that in view of the judgment of the Division Bench of this Court in the case of **Latika Rajaram Mane v. State of Maharashtra & Others** 2013(4) Mh.L.J. 244, teachers of the primary school in respect of decisions falling within the purview of Rule 20 of the Maharashtra Right of Children to

Free and Compulsory Education Rules, 2011 would be maintainable before the School Tribunal. He, however, submits that since the order dated 7.3.2012 passed by the School Tribunal in the Appeal No.81 of 2011 dismissing the appeal filed by the Respondents is not set aside by the Civil Court, no fresh appeal can be filed by the Respondents on the similar grounds, which was the subject matter of the Appeal No.81 of 2011.

3 Mr. Jamdar the learned counsel appearing for the Respondent No.1 invited my attention to the order dated 7.3.2012 passed by the School Tribunal in Appeal No.81 of 2011 and submitted that when the said appeal was filed by the Respondents, the same was opposed by the Petitioners herein on the ground of jurisdiction. He submits that the School Tribunal by the judgment and order dated 7.3.2012 accepted the contention raised by the Petitioners and dismissed the appeal filed by the Respondents for want of jurisdiction. It is submitted that in view of the appeal filed by the Respondents herein having been dismissed for want of jurisdiction, the Respondent herein filed the Regular Civil Suit No.148 of 2012. He submits that even the said civil suit was opposed by the Petitioners herein on the ground of maintainability. The Civil Court had framed a preliminary issued based on the objection raised by the Petitioners herein. He submits that in the meanwhile, the Division Bench of this Court interpreted the provisions of Rule 20 of the Maharashtra Right of Children to Free and Compulsory Education Rules, 2011 and held that the appeal filed by the primary teacher before the School Tribunal would be maintainable. He submits that in view of the said judgment, the Respondents made an application for withdrawal of the said civil suit before the Lok Adalat inter-alia praying for liberty to

withdraw the civil suit with liberty to file an appeal before the School Tribunal. The Lok Adalat passed an order in the said application on 23.6.2013 thereby allowing the said application with liberty as prayed for. He submits that the said order passed by the Lok Adalat granting liberty to withdraw the civil suit with liberty to file an appeal has not been impugned by the Petitioner herein.

4 Perusal of the order dated 7.3.2012 passed by the School Tribunal in Appeal No.81 of 2011 clearly indicates that the said appeal was rejected on the ground of maintainability in view of the objection raised by the Petitioners. The Petitioners raised an objection to the maintainability of the suit also when the Respondents filed the civil suit. The learned Trial Judge had framed preliminary issue of jurisdiction in view of the objection raised by the Petitioners.

5 In so far as the submission of the learned counsel for the Petitioners that no consent of the Petitioners was obtained by the Lok Adalat while granting liberty to the Respondents to file an appeal before the School Tribunal is concerned, it is not in dispute that the Petitioners herein did not challenge the order passed by the Lok Adalat. In my view, the Petitioners thus cannot be allowed to raise this issue for the first time in the present proceedings.

6 In my view, the School Tribunal had rightly rejected the application filed by the Petitioners in view of interpretation of law by the Division Bench of this Court in the Case of **Latika Mane (Supra)**. The Petition is devoid of merits and is, accordingly, dismissed.

7 The School Tribunal is directed to hear the appeal filed by the Respondents expeditiously and shall make an endeavour to dispose of the appeal within a period of six months from today. Both the parties to co-operate with each other and the School Tribunal for expeditious disposal of the appeal. At this stage, the learned counsel for the Petitioners seek liberty to challenge the order passed by the Lok Adalat. It is not in dispute that no such contention was raised by the Petitioners before the School Tribunal and thus, no such liberty can be granted to the Petitioners by this Court.

R.D. DHANUKA, J.