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

WRIT PETITION NO. 3352 OF 2015

Mrs. Shailaja Prakash Sutrave.

... Petitioner.

V/s.

Mr. Santosh Mayaram Pardeshi and Ors.

... Respondents.

Mr. Deepak Gupte for the Petitioner.

None for the Respondents.

CORAM : N.M. Jamdar, J.

18 August, 2016.

Oral Order :-

The Petitioner challenges the order dated 29 January 2014 passed by the Civil Judge, Junior Division, Khed, Pune rejecting the Application below Exhibit 23 for rejection of plaint and granting the application below Exhibit 28 for leave as sought for by the Respondents – Plaintiffs.

2. The Suit was filed by the Respondents – Plaintiffs complaining of a public nuisance alleged to be committed by the

Petitioner. In this suit an application was moved by the Petitioner on the ground that the plaint should be rejected under Order 7 Rule 11 and in view of Section 91 (1)(b) of the Code of Civil Procedure as leave is not taken before institution of the suit. An application was moved by the Respondent – Plaintiff for grant of leave. By the impugned order, the learned Judge has granted leave.

3. The learned Counsel for the Petitioner submitted that the leave cannot be granted subsequently and suit must be dismissed if it is instituted without leave. The learned Civil Judge has relied upon the decision in the case of *Salem Advocates Bar Association Tamilnadu v/s. Union of India (AIR) 2003 SC 189*. The learned Counsel for the Petitioner submitted that this decision is not applicable as it does not refer to the other clauses of Order 7 Rule 11. The learned Counsel for the Petitioner has also relied upon non reported decision of the learned Single Judge of Madras High Court in the case of *Thambaiya Naidu v/s. State of Tamil Nadu, Divisional Engineer (Highways), Highways Department, Commissioner, Cuddalore Municipality, Ramu reported in 2008 Law Suit (Mad) 844*.

4. The suit is instituted complaining of public nuisance. It is not the case that prior to grant of any leave any interim order is passed against the Petitioner. Though the words 'prior permission' is stated therein in the Section, the Court is not powerless to remedy

the defect for grant of leave subsequently and cure the defect. Ultimately, the construction of the provision will have to be done with keeping in mind the justice oriented approach. In the decision of the Madras High Court which is cited, no leave at all was granted by the Court and the Suit and Appeal proceeded and this factual situation was taken note by the learned Single Judge in disposing of the Appeal. The learned Single Judge has held that without there being any leave granted, no order of mandatory injunction could have been issued. Such is not the factual position in the present case. It is not a case where orders are passed in the suit before leave is granted. No failure of justice has occasioned as the defect in the suit has been cured by the learned Judge. The scope of Article 227 of the Constitution to interfere with the orders of the subordinate Courts also should be kept in mind. The Petitioner will get full opportunity to put forth her case on merits. No interference is warranted in the impugned orders. The Writ Petition is accordingly rejected.

(N.M. Jamdar, J.)