

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

WRIT PETITION NO. 7117 OF 2016

Mr.Kailas Lakshman Satav & ors. ... Petitioners

v/s

Shri Lakshman Genuji Satav & ors. ... Respondents

Mr.S.C.Wakankar for the petitioners.

Mr.Uday Warunjikar for Resp. Nos.1 A to 1 E and 2.

Coram: N.M. Jamdar, J.

Dated: 29 August 2016

ORAL ORDER:

By this petition, the Petitioners challenge the order below Exh.253 in Special Civil Suit No.82 of 2011. The application was taken out by the Petitioners/Plaintiffs.

2 While rejecting the application, the learned Civil Judge has kept the issue open to be considered at the time of hearing of the suit. Learned counsel for the Petitioners submitted that the learned Judge has proceeded on erroneous basis that the Petitioners have sought direction to reply to interrogatories as contemplated under Order 7 Rule 4 of the Code of Civil Procedure, when what was sought for by

the Petitioners is, calling upon the Respondents/Defendants to admit the facts, which is indifferent provision.

3 The learned Civil Judge has noted the stage at which the application was moved. The learned Judge has noted that the Petitioners have closed their evidence. Respondents/Defendants have also closed their evidence and the suit is at the stage of arguments. Even otherwise, the said order is purely an interlocutory order. The Code of Civil Procedure has not provided any appeal or revision against such order. Under Section 105 of the Code of Civil Procedure, it is open for the Petitioners to challenge the impugned order in the appellate proceedings. Furthermore, the learned Civil Judge has not closed the issue and if the learned Judge is of the opinion that adverse inference is to be drawn against the Respondents for non-production of documents, it is always open to the learned Judge to enter such finding.

3 In these circumstances, no case is made out for exercising the power of superintendence. The writ petition is disposed of with above clarification.

(N. M. Jamdar, J.)