

Sequeira

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

WRIT PETITION NO. 8716 OF 2013

Mrs.Lata Deelip Kamdar.

.. Petitioner

Vs.

Mr.Todarmal Gangabisan Mundhra & anr.

.. Respondents

Mr.M.M.Sathaye a/w Mr.Jayprakash Tiwari, for the Petitioner.

Mr.R.N.Gaonkar a/w Ms Mahi Lalka i/b Mr.Ashok Singh, for
Respondent Nos.3 & 4.

CORAM : N.M.Jamdar, J.

Wednesday, 24 August 2016.

P.C. :

Heard learned counsel for the parties. On 12 December 2013, following order was passed.

'1 Heard Shri Sathaye, the learned counsel appearing for the Petitioner.

2 Issue notice to the Respondents, returnable on 20th January 2014. In addition to service of notice through Court, the advocate for the Petitioner shall serve a private notice by Registered Post A.D. and/or by Courier service and/or by hand delivery on the Respondents and shall file affidavit of service before the returnable date.

3 One of the contentions urged on behalf of the Petitioner is that the impugned order has been passed without hearing her. Hence the parties are put to notice that the above Writ Petition may be heard and disposed of finally at the stage of admission.

(4) In the meantime there would be ad-interim relief in terms of prayer clause (c).

Accordingly petition is taken up for disposal.

2. The order dated 28 February 2013 has been passed without hearing the Petitioner. When the Petitioner moved an application on the ground that the order is passed without hearing the Petitioner and that serious consequences will ensue as burden has been wrongly placed on Petitioner-Plaintiff, the learned Judge rejected that application with an endorsement that it is open to the Petitioner to challenge the order in higher Court. This is not a correct approach when the order is passed without hearing the party and request is made to hear and dispose of the application, the learned Judge could have either decided the application by giving reason why hearing is not required to be given or should have given hearing. In the circumstances, since the order passed below Exhibit 58 is without hearing the Petitioner, the same is quashed and set aside. The application filed by the Petitioner below Exhibit 58 stands restored to file.

3. Parties will appear before the learned Civil Judge on 19 September 2016. The learned Civil Judge will give a suitable date for hearing of Exhibit 58. The Writ Petition is accordingly disposed of in above terms. The interim relief granted to the stay of the suit stands vacated. All parties to act on an authenticated copy of the order.

(N.M.Jamdar, J.)