

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

**CIVIL APPLICATION NO.2209 OF 2016
IN
WRIT PETITION NO.6311 OF 2016**

Mr. Dilip R. Sonawale

..... Applicant

In the matter of

Shri. Dilip R. Sonawale

..... Petitioner

Versus

Shri. Kashinath Dhondiba Dangat & Ors.

..... Respondents

....

Mr. Mandar Limaye for the Applicant / Petitioner.

None for the Respondents.

...

CORAM : N. M. Jamdar, J.

Friday 26 AUGUST, 2016

P. C.

. Perused the application, sufficient cause is made out for restoration of the Civil Application.

2. The Civil application is allowed in terms of prayer clauses (a) to (c).

3. Objections are waived.

4. By order passed, today writ petition is restored to file and taken up for consideration forthwith.

5. The Petitioner has challenged the order passed by the learned Civil Judge, Junior Division, Pune dated 22 February, 2016 wherein the learned Civil Judge has permitted Defendant No.2 be transposed as Plaintiff No.3.

6. The learned counsel for the Petitioner submitted that order passed by the learned Judge has incorrect in law and no cause of action would survive in view of the transposition of Defendant No.2 as against the Petitioner. The order challenged is purely interlocutory. The learned Judge has stated that no prejudice is likely to be caused to the Petitioner by way of such transposition. Nothing is shown as to how any prejudice is caused except by stating that pleadings should have to be amended. The Plaintiff in the present case had not raised any objection. In this circumstances, since the impugned order can be challenged in appeal as per section 105 of the Civil Procedure Code, no interference is warranted. If the cause of action does not survive as contended by the Petitioner then it is always open to the Petitioner to move appropriate application to the learned Civil Judge on that basis.

7. Since the interest of the Petitioner is adequately protected as above, it is not necessary to interfere with the impugned order.

8. The Writ Petition is disposed of.

(N. M. Jamdar, J.)