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

***APPEAL FROM ORDER NO. 6 OF 2014
with
CIVIL APPLICATION NO. 275 OF 2014***

Mr. Malhari Bala Shende
Since deceased through his legal heirs
(A) Smt. Parubai Malhari Shende & Ors. ... Appellants/Applicants.

V/s.

Mr. Ramchandra Govindram Gehani and Ors. ... Respondents.

Mr. Sandeep Salunke for the Appellants/Applicants.
Mr. S.M. Sabrad for Respondents 1 and 2.
Mr. Ravindra Pachundkar for Respondents 3 and 4.

CORAM : N.M. Jamdar, J.

16 June, 2016.

Oral Order :-

The Appellants challenge the judgment and order passed by the learned District Judge, Baramati, dated 2 August 2012, setting aside the judgment and decree passed by the learned Civil Judge, Junior Division, Daund dated 26 June 2003 and remanding the proceedings to the learned Civil Judge for de-novo consideration. The notices have been issued on 27 November 2012 for final disposal at the admission stage. Accordingly, taken up for disposal.

2. The short ground on which the impugned order passed by

the learned District Judge needs to be set aside, is that it is absolutely bereft of any reasoning. While setting aside a decree passed by the Civil Court and remanding the proceedings for fresh consideration, the learned Appellate Court is enjoined to give reasons. Not only the learned District Judge has remanded the proceedings with a discussion in one paragraph but even in that one paragraph there only one material sentence which is the conclusion.

3. The Plaintiffs, who are the Respondent Nos.1 and 2 filed a suit for specific performance of an alleged agreement dated 16 June 1989. The specific performance was sought against the Defendant No.1 in the suit. The Defendant No.3, who is the Appellant herein, filed his written statement and took a stand that it is the Defendant No.3 who is the owner of the property and Defendant No.1 has no concern with the same. The learned Civil Judge framed issues as regard the relief for specific performance in favour of the Plaintiffs and held that they are not entitled to specific performance but only for refund of the earnest money. As against this, the Respondent Nos.1 and 2 – Original Plaintiffs filed a Regular Civil Appeal No. 65 of 2003 in the Court of learned District Judge, Baramati. In this Appeal the Defendant No.3 – Appellant appeared and contested the Appeal. After recording the facts, the learned District Judge held that the Appellant – Defendant No.3 has led his evidence but Defendant Nos.1 and 2 have not led their evidence and therefore, the proceedings need to be remanded back, and cross objections were allowed. There is absolutely no discussion as to in what circumstances the Defendant Nos.1 and 2 did not lead their evidence.

Whether they were prevented in any manner or it was on their own volition that they chose not to lead evidence. There could be various reasons a party has not lead evidence, and unless it is shown that they were cogent and sufficient reasons that prevented the party from not leading their evidence, that an equitable order at present nature may be passed. A decree passed by the Civil Court, after full trial, cannot be, as stated earlier set aside in one line, that one party had not led the evidence. It was the Appeal filed by the Original Plaintiff, that cross-objections filed by the Defendant Nos.1 and 2 which have been allowed. There is no discussion before allowing these cross-objections.

5. In the circumstances, the order passed by the learned District Judge cannot be sustained. The Appeal filed before the learned District Judge, Baramati bearing Regular Civil Appeal No. 65 of 2003 stands restored to file. It is clarified that this Court has not taken a view that the proceedings should not be remanded back to the Trial Court but the impugned order is set aside on the ground of lack of reasoning. Whether the remand is necessary or otherwise is something the learned District Judge would decide after hearing both the sides and after giving reasons in support of the conclusion.

6. The Appeal from Order is accordingly disposed of. The Registry to communicate the order to the learned District Court, Baramati forthwith. All contentions of the parties are kept open. Civil Application is accordingly disposed of

(N.M. Jamdar, J.)