

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

WRIT PETITION NO.13757 OF 2016

Dombivli Shikshan Prasarak
Mandal

..Petitioner.

Vs

Shree Educational Trust and Ors

.. Respondents

Mr. A.V.Anturkar, Senior Advocate, with Ms. Anjali P. Yojurvedi,
Advocate for Petitioner.

Mr. Arif Bookwala, Senior Advocate a/w Mr.Shyam Dewani i/b
Dewani Asso., Advocates for respondents.

**CORAM : R.G.KETKAR,J.
DATE : 22/12/2016**

PC:

1. Heard Mr.A.V. Anturkar, learned senior counsel for the petitioner and Mr. Arif Bookwala, learned senior counsel for respondents. Rule. Mr. Dewani waives service for respondents. At the request and by consent of the parties, rule is made returnable forthwith and Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant', has challenged the Judgment and order dated 8.11.2016 passed by the learned District Judge-5, Kalyan in Misc. Civil Appeal No.96 of 2016. By that order, the learned District Judge allowed the appeal preferred by the respondents, hereinafter referred to as 'plaintiffs' and quashed and set aside the Judgment and order

dated 29.7.2016 passed by the learned Jt. Civil Judge, Jr. Dn Kalyan below Exhibit-5 in R.C.S. No.289 of 2016. The learned District Judge directed the defendants to restore electric connection and water supply to the suit structure within 15 days from the date of the order and further not to disconnect till the decision of the present suit or decision of Spl. Civil Suit No.152 of 2015, whichever is earlier, among other directions.

3. The matter was heard on 14.12.2016 wherein submissions made on behalf of the defendant that the defendant is not averse to the restoration of electricity supply and water connection and while allowing the appeal the learned District Judge did not impose condition on the plaintiffs as regards payment of equal monthly installments, were recorded. It is now evident from the record and which is not in dispute that the electricity supply and water connection is restored on 17.12.2016.

4. During the course of hearing, it was suggested by me that as the learned District Judge has not considered imposition of conditions while allowing the appeal, impugned order will be set aside and the learned District Judge will be directed to decide the appeal afresh. Mr. Bookwala consented for adopting such course.

5. Mr. Bookwala fairly made statement that the plaintiffs will not withdraw that application and will contest the application on merits and will ensure that the application is not dismissed in default. Mr. Anturkar states that the defendant will not disconnect

electricity supply and water supply pending the appeal. Statements made by the learned counsel for the parties are accepted.

6. In view thereof, by consent of the parties, the impugned order is set aside and Misc. Civil Appeal No.96 of 2016 is restored to the file of the District Court. Parties shall appear before the learned District Judge on 6.1.2017 and for that purpose no notice be issued to them. The learned District Judge will give suitable date and will dispose of the Appeal as expeditiously as possible and preferably within four weeks from the date of fixing hearing of the Appeal. The learned District Judge will decide the appeal uninfluenced by the observations made in the order dated 14.12.2016 and in this order. All contentions of the parties on merits are expressly kept open.

7. Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)