

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4213 OF 2017

VYANKAT ZUMBAR PAWAR AND OTHERS
VERSUS
SHAKUNTALA SUBHAS BHOSALE AND OTHERS

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Advocate for the Petitioners : Shri S. A. Nandure.
Advocate for Respondents 1 to 4 : Shri A.B.Kharosekar.
AGP for Respondents 5 and 6 : Shri S.N.Kendre.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th September, 2017

Per Court:

1 The Petitioners are aggrieved by the order dated 30.09.2015 passed by the learned Appellate Court below Exhibit-55 in Regular Civil Appeal No.156/2009.

2 I have considered the submissions of the learned Advocates for quite sometime on 27.09.2017 and again today.

3 The learned Advocate for Respondent Nos.1 to 4 submits that this petition be dismissed with costs.

4 It is apparent that the Appellate Court had allowed RCA No.156/2009 and by quashing the judgment of the Trial Court dated 19.12.2008 in RCS No.233/2006, the Petitioners/ Appellants / Defendants were directed to deposit Rs.25,000/- in the Appellate Court on or before

30.09.2015 as costs in favour of Plaintiff Nos.1 and 2. After depositing the costs, the suit would stand remanded to the Trial Court to comply with the further directions of the Appellate Court. It is not in dispute that the Appellate Court had ordered that if the Petitioners/ Defendants fail to deposit costs, the appeal would stand dismissed.

5 It cannot be ignored that the Petitioners/ Defendants had moved an application seeking extension of time on 30.09.2015 which was the last date for depositing costs. Though no provision of law has been quoted, the said application could have been treated as having been filed under Section 148 of the Code of Civil Procedure.

6 The Appellate Court has concluded that the order directing to deposit the costs was conditional and hence, Exhibit-55 was not tenable. This order seems to have been passed as Section 148 of the Code of Civil Procedure was not specifically invoked by the Petitioners.

7 The learned Advocate for the Petitioners now submits that an amount of Rs.25,000/- would be deposited in the Appellate Court within two weeks from today i.e. on or before 12.10.2017.

8 The learned Advocate for Respondents Nos.1 to 4 submits that if costs are deposited on or before 12.10.2017, the original Plaintiffs be allowed to withdraw the said amount in equal shares prior to Diwali without conditions.

9 Considering the above and in order to ensure that the ends of

justice are met and the Petitioners are not rendered remedy-less, this Writ Petition is allowed. The impugned order dated 30.09.2015 is quashed and set aside. Exhibit-55 is, therefore, stands allowed with the direction that the Petitioners shall deposit the above costs of Rs.25,000/- (Rupees Twenty Five Thousand) before the Appellate Court on or before 12.10.2017. No prayer for extension of time will be entertained. After the amount is deposited, the original Plaintiffs shall be permitted to withdraw the said amount without conditions.

10 In the event the above direction is not complied with, the impugned order dated 30.09.2015 as well as the judgment of the Trial Court dated 19.12.2008 shall stand restored.

kps

(RAVINDRA V. GHUGE, J.)