

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

WRIT PETITION NO.941 OF 2017

Kaushik Shrihari Londhe ... PETITIONER

VERSUS

Mahanand w/o Kaushik Londhe ... RESPONDENT

.....
Shri Sandeep Swami, Advocate holding for
Shri V.D. Gunale, Advocate for petitioner
.....

CORAM: S. B. SHUKRE, J.

DATED: 20th January, 2017.

ORAL ORDER :

1. Heard learned counsel for the petitioner. He submits that, the impugned order dated 4/8/2016 is unsustainable in law as review of the order passed by the trial Court below application Exh.11 on 6/3/2014 was not amenable to review jurisdiction of the Civil Court. Apparently, there is some force in the contention of learned counsel for the petitioner. But, I find at the same time, the learned Civil Judge, in allowing the application at Exh.39, has used some wrong expression when it was said by him that the order passed below Exh.11 was reviewed by him.

2. As a matter of fact, this order passed below Exh.11 was neither on the merits of the case nor did it decide anything. The order simply said that, the application at Exh.11 was filed. Such an order, therefore, could have been recalled by the learned Civil Judge by invoking inherent powers of the Civil Court under Section 151 of the Code of Civil Procedure directing the parties to argue the application on merits. This was not done by the learned Civil Judge. Thus, the fact remains that the application at Exh.11 itself was not decided on merits of the case and, therefore, interest of justice required that it was so decided especially when the parties were before the Court and prepared for arguing the application on merits. Therefore, in exercise of extraordinary jurisdiction of this Court, I am not inclined to make any interference in the impugned order. All contentions of the parties are kept open. Accordingly, this Writ Petition is dismissed with costs.

(S. B. SHUKRE)
JUDGE

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