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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.318 OF 2017

WITH

CIVIL WRIT PETITION NO.7245 OF 2016

WITH

CIVIL WRIT PETITION NO.11602 OF 2016

WITH

CIVIL APPLICATION (ST) NO.277 OF 2017

Smt. Kusum Venkatesh Shet

..Applicant.

V/s.

Nishigand Sahaniwas CHS Ltd.

..Respondent.

Ms.Shobha Shet for the Applicant in CAW/318/2017 and CAWST / 277/2017 and original Respondent No.1 in both petitions.

Mr.Vikas Warekar i/b. Warekar & Warekar for original petitioner in WP/7245/2016 and WP/11602/2016.

CORAM : N.M.Jamdar, J.

DATED : 6 February, 2017

ORAL ORDER

Not on board. Taken on production board by way of praecipe.

2. By this application, the Applicant seeks recall of the order passed by me on 3 October, 2016 in Civil Application

No.2280 of 2016 and Writ Petition No.7245 of 2016.

3. Heard the learned counsel for the parties. The petition as well as the civil application were disposed of by the said order. Paragraphs 3 and 4 of the said order read as under:-

“ After arguing the matter for some time wherein the learned counsel for the Applicant / Respondent No.1 in the petition, who had earlier sought to appear in-person as constituted attorney of the Respondent No.1, raised various general grievances, but the main point which is pressed is that the order dated 12 December 2014 does not survive in view of the subsequent orders that have been passed. It is the contention of the learned counsel of the Respondent No.1 that it is not necessary to examine the legality of the order dated 12 December 2014 as the challenge has become infructuous and, therefore, there is no need to keep the writ petition pending. Thus, the stand of the Respondent No.1 is that the order dated 12 December 2014 has lost its legal efficacy. The learned counsel for the original Petitioner also agree that it is not necessary to pursue the challenge which arose from the order dated 12 December 2014. In any case, the proceedings arise from an interlocutory order in a dispute which is pending between the parties and, therefore, all contentions of the parties on merits of the dispute will be decided by the learned Cooperative Court on its own merits when the dispute is taken up for hearing. All contentions of both parties are kept open.

5. *In these circumstances, since it is not necessary to decide the writ petition in view of the aforesaid assertion of the learned counsel for the Respondent No.1 and that the main dispute is pending wherein it is open to the parties to take out such application as may be permissible in law. The civil application as well as the writ petition stand disposed of*

in terms of what is stated above.”

4. The learned counsel for the Applicant states that when a statement was made that the order dated 12 December, 2014 which is impugned in Writ Petition No.7245 of 2016 does not survive, the Applicant was not alive to the consequences that may arise and the stand that may be taken by the Respondent in respect of other orders passed. By Civil Application No.2280 of 2016, recall of the order whereby Writ Petition No.7245 of 2016 was admitted by the learned Single Judge (Smt.R.P. SondurBaldota, J.) was sought.

5. Both the application and the writ petition were not disposed off, not on merits, but in view of the statement made. If it is the contention of the learned counsel for the Applicant that the statement was made under a mistaken impression regarding the consequences that may ensue, what will have to be done is to place the civil application as well as the writ petition both on the board, as the order dated 3 October, 2016 is a consent order passed on a statement made by the Advocate for the Applicant. The learned counsel for the Respondent submitted that in that case the original petition will have to be restored.

6. I am inclined to grant this indulgence considering that the learned counsel for the Applicant had earlier appeared in person in furtherance to the cause of her mother and thereafter appeared as an Advocate. I do not intend to shut out the controversy on merits if

one party was genuinely not aware of the consequences. The Respondent will not be prejudiced since the main petition will also stand restored.

7. Accordingly, the order dated 3 October, 2016 in Civil Application No.2280 of 2016 and Writ Petition No.7245 of 2016 stands restored. A consequence of recalling the order dated 3 October, 2016 would be that the Civil Application No.2280 of 2016 and Writ Petition No.7245 of 2016 will stand restored to the file. Rule is already issued in Writ Petition No.7245 of 2016.

8. As far as Civil Application No.2280 of 2016, is concerned, it seeks recall of the order of admission of the Writ Petition No.7245 of 2016 which now stands restored. Considering the fact that the Applicant was heard at the time of admission of the petition and the allegation is made against the Respondent – original Petitioner that the Court was misled into issuing Rule on that date, it would be appropriate that the Civil Application No.2280 of 2016 is placed before the said learned Single Judge (Smt.R.P. SondurBaldota, J.) who has passed the order issuing Rule in the writ petition.

9. Since I have shown the indulgence of recalling the order dated 3 October, 2016 only on the above ground, I have not looked into the various statements made in the present application, to which the original Petitioner had no opportunity to file reply.

10. As far as the request of the learned counsel for the Applicant that the Civil Application No.2280 of 2016 as well as Writ Petition No.7245 of 2016 be heard by me is concerned, it has been pointed out repeatedly to the learned counsel for the Applicant that this Court currently does not have that assignment and also that the Civil Application No.2280 of 2016 proceeds on the basis that the Court issuing Rule was misled into issuing the Rule, and, therefore, it is appropriate that the matter is heard by the same learned Single Judge who has issued Rule in the matter. The position that the Applicant will have to take immediate steps in respect of the Civil Application No.2280 of 2016, in view of the circumstances, was also informed to the learned counsel for the Applicant. The Civil Application No.2280 of 2016 and Writ Petition No.7245 of 2016 will be considered on their own merits.

11. Civil Application stands disposed off in above terms. It is again made clear that this sheer indulgence is extended to the Applicant because of the fact the Advocate for the Applicant appeared in person earlier and the assertion that she was not aware of the consequences of the statement, is not an impossibility looking at the manner in which the proceedings were conducted.

(N.M.Jamdar, J.)