

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

WRIT PETITION NO.758 OF 2017

Shri Ajj Abdulraheman Inamdar ... Petitioner

Vs.

Shri Abdul Raheman Mohd. Ali Malik ... Respondent

Mr.S.B. Thorat for the Petitioner
Mr.A.B. Kadam for Resp. Nos.1 to 4 and 6

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JUNE 28, 2017**

P.C. :

1. Rule. By consent, Rule made returnable forthwith and heard finally.
2. Leave to amend as respondent No.5 is dead and the learned Counsel for the petitioner informs that the legal heirs of respondent No.5 are already brought on record in the suit but technically, remained to be mentioned here in the Writ Petition. Amendments to be carried out forthwith.
3. The petition is directed against the order dated 27.9.2016 passed by the learned Joint Civil Judge, Junior Division, Junnar

thereby rejecting the application which was filed under Order 39 Rule 2A of the Civil Procedure Code alleging that breach of the interim order dated 23.2.2009 was committed by respondent Nos.1 to 6, who are the main contesting parties.

4. On a perusal of the impugned order, it is found that in para 9, the learned Judge has mentioned that the said application made under Order 39 Rule 2A is a separate and independent proceeding and should have been numbered and registered separately. As it was not done, the Court rejected the application. The approach of the learned trial Judge is erroneous. If there are some procedural flaws, like not numbering the application or there is no separate registration to the application as required, then, the Court should not dismiss the application itself on such technical ground, but such flaws are irregularities which can be rectified at the trial Court stage by taking a correctional approach. It is informed by the learned Counsel for the petitioner and the respondent Nos.1 to 6 that the respondents / the original defendants, have filed reply to the said application.

5. In view of the above, the following order is passed:
- i) The order below exhibit 97 in R.C.S. No.15 of 2009 is set aside.
 - ii) The application under Order 39 Rule 2A of the Civil Procedure Code filed by the original plaintiff and if any reply filed by the defendants are to be separately numbered and registered.
 - iii) If the defendants want to file additional reply, they be allowed.
6. Writ Petition is allowed accordingly and stands disposed of as such.

(MRIDULA BHATKAR, J.)