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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 38 OF 2015**

Shrikant Eknath Pandit

...Appellant

Versus

Deepali Dilip Pandit & Ors

...Respondents

Ms Sangita R Gudhka, for the Appellant.

Ms Shilpa Desai, i/b IR Kulkarni, for Respondents Nos. 1 & 2.

CORAM: G.S. PATEL, J

DATED: 10th July 2017

PC:-

1. The 2nd Defendant sought relief under Order XXXIX Rule 4 of the Code of Civil Procedure 1908 asking to be relieved from a statement recorded on his behalf on 22nd September 2005 in the Plaintiff's Notice of Motion No. 1255 of 2003. The Suit itself is for partition of HUF property. The 2nd Defendant made a statement that he would not dispose of a car pending the Suit. This was alleged by the Plaintiff to have been bought from the corpus or nucleus of HUF. The 2nd Defendant denied this and said he had taken a car finance loan from HSBC, one he has since repaid. The car in question is a Maruti Van No. MH-12-BG-9743.

2. The Plaintiff opposed the 2nd Defendant's application most vigorously saying that this would amount to setting aside the order

passed in the earlier Notice of Motion. The learned Judge held that there was no change of circumstances warranting relief to the 2nd Defendant.

3. In my view, the approach did not take into account the fact that in the meantime the 2nd Defendant had repaid the loan and more pertinently, for every day the car remained unsold there was a potential loss to all concerned — including the Plaintiff — because the value of the car continue to depreciate. That van is now 15 years old. At the time when the application was made in 2010, the value would have been much higher. The application was decided only in 2014, and this Appeal has been pending since 2015. This means that seven years have been lost in trying to sell a car. It has aged considerably in that time and correspondingly its value has fallen.

4. On the footing that such things are better done late than never, I will permit the sale of the car, assuming of course that the 2nd Defendant can find a buyer today.

5. The order dated 5th November 2014 is set aside. The 2nd Defendant's Notice of Motion No. 2199 of 2010 is made absolute. The 2nd Defendant is permitted to sell the car. The originals of the sale documents and entire sale proceeds will be deposited with the City Civil Court to the credit of SC Suit No. 6518 of 2003. The 2nd Defendant or the Plaintiff may then apply to that Court for withdrawal and that Court may permit such withdrawal on such terms and in such proportions as it thinks fit.

6. The Appeal from Order is disposed of in these terms with no order as to costs.

(G. S. PATEL, J)