

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.3758 OF 2017
(Nagnath s/o Manik Randive and others Vs. Vasant Shrirang Mule
and another)

Mr.T.M.Venjane, Advocate for the petitioners.
Mr.S.S.Manale, Advocate for respondent No.1.

(CORAM : Ravindra V.Ghuge, J.)
DATE : 14/12/2018

PER COURT :

1. On 22/03/2017, this Court had passed the following order :-

“1. Heard. Having gone through the roznama dated 30/01/2017 and 18/02/2017, I find prima facie substance in the arguments of learned counsel for the petitioners that sufficient opportunity of hearing was not granted to the petitioners. Issue notice to respondents for final disposal, returnable on 12th April 2017.

2. Meanwhile, there shall be ad-interim stay to the impugned order dated 18/02/2017 until further orders and which stay shall amount to revival of pendency of the application Exh.43, which shall be appropriately considered by the trial Court.”

2. I have heard the learned Advocates for the respective sides. Mr.Manale, learned Advocate has strenuously opposed this petition and submits that this petition be dismissed with heavy costs.

3. I have considered the submissions of the learned Advocates

and have perused the record available. It appears that the petitioners were not present when the impugned order was passed. However, it needs to be appreciated that application Exh.43 was filed by the plaintiff on 30/11/2016 and was finally allowed by the order dated 18/02/2017. The petitioners are aggrieved since they did not get an opportunity to address the Trial Court, for which they need to blame themselves.

4. In view of the above, this petition is partly allowed. The impugned order dated 18/02/2017 is set aside and application Exh.43 is restored considering the order dated 22/03/2017 passed by this Court. However, the 5 petitioners shall deposit an amount of Rs.1,000/- each before the Trial Court on or before 05/01/2019, failing which, this order shall stand recalled and the impugned order shall stand restored. The said amount shall be withdrawn by the plaintiff alone without conditions, as costs. On the same date, the litigating sides would advance their submissions on Exh.43 and the Trial Court is at liberty to decide the said application on its own merits. It be noted that this Court has set aside the impugned order only on a technical ground and hence the Trial Court would consider Exh.43 on its own merits.

(Ravindra V.Ghuge, J.)