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

CRIMINAL WRIT PETITION NO.579 OF 2018

Zankhana Ashish Barai and Anr.	...Petitioners
Versus	
Ashish Vallabhdas Barai and Ors.	...Respondents

Mr.S.R.Gaud, for the Petitioners.

Mr.Vivek Joshi, for the Respondent No.1.

Mr.K.A.Waikar, for the Respondent Nos.2 and 3.

Mr.H.J.Dedhia, A.P.P for the Respondent No.5-State.

CORAM : REVATI MOHITE DERE, J.

DATE : 14th FEBRUARY, 2018

P.C. :

1. At the outset, learned counsel for the petitioners submits that despite the direction given by this Court vide order dated 2nd February, 2018, to decide the application filed by the petitioners and to also consider whether the Respondent No.1 has breached his oral statement made before the Court and take appropriate action, if warranted, the learned Magistrate has only considered the application on merits and has not considered,

whether the Respondent No.1 has breached his oral statement made before the Court.

2. Perused the order dated 5th February, 2018, passed by the learned Judicial Magistrate First Class, II Court, Thane, below Exhibit – 13, in O.M.A.No.149 of 2017. Despite the direction in paragraph 8 of the order dated 2nd February, 2018, passed by this Court in Criminal Writ Petition No.434 of 2018, the learned Magistrate has not considered, whether the Respondent No.1 has breached his oral statement made before the Court. The claim of the petitioners through out, was that the Respondent No.1 had made an oral statement that the petitioners will not be dispossessed from the house, pursuant to which no orders were passed.

3. Without going into the merits of the impugned order dated 5th February, 2018, as the learned Magistrate has failed to consider the aforesaid, the impugned order dated 5th February, 2018, passed by the learned Judicial Magistrate First Class, II Court, Thane, below Exhibit – 13, in O.M.A.No.149 of 2017, is quashed and set aside. Exhibit – 13 is restored back to its original file. The learned Magistrate shall again hear the

parties and shall also consider, whether the Respondent No.1 has breached his oral statement made before the Court, that he will not dispossess the petitioners. The parties are at liberty to file affidavits, if so required. The learned Magistrate shall decide the said application, within one week from the date of receipt of this order.

4. Petition is accordingly disposed of on the aforesaid terms.
5. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.