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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.240 OF 2018

Sarosh J. Irani, since deceased
through L.Rs.& Ors.

...Applicants

V/s.

Dharma D. Dhone, since deceased
through L.Rs. & Ors.

...Respondents

Mr.Girish Godbole I/b Ms.Prabha Badadare for the Applicants.

Mr.S.M. Oka I/b Mr.Sagar Joshi for the Respondent No.1-c.

Mr.A.S. Rao for the Respondent Nos.10 to 10-e.

CORAM : R.D. DHANUKA, J.

DATE : 21ST AUGUST, 2018

P.C. :-

1. By consent of parties, the order dated 3rd February, 2018 passed by the learned 4th Civil Judge, Senior Division, Kalyan, below Exhibit – 37 in RCS No.39 of 2016 is set aside.

2. The original plaintiffs would be permitted to apply for amendment to the plaint in RCS No.39 of 2016. If any such amendment is allowed by the learned trial Court in favour of the petitioners, the defendants would be at liberty to file a fresh application under Order 7 Rule 11 (a) to (d) of the Code of Civil Procedure, 1908. If any such application is filed by the defendants, the same shall be decided on its own merits without being influenced

by the observations made and the conclusion drawn in the order dated 3rd February, 2018.

3. The Civil Revision Application is disposed of in aforesaid terms. There shall be no order as to costs.

4. It is made clear that whether the learned trial Court shall allow the application for amendment of the plaint or not, no views are expressed by this Court and all the contentions are kept open. It is made clear that if the trial Court refuses to allow an application for amendment to the plaint as may be filed by the plaintiffs, the defendants would be at liberty to file a fresh application under Order 7 Rule 11(a) to (d) of the Code of Civil Procedure, 1908 on the basis of the same averments which were made in the earlier application on which the impugned order came to be passed.

(R.D. DHANUKA, J.)