

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3776 OF 2017
Vikaskumar Gayanchand Jain and anr. .. Petitioners
vs.
Premchand R. Jain and anr. .. Respondents

Mr. G.S. Godbole i/b Ms Rutuja A. Ambekar for the Petitioner.
Mr. Unmesh G. Dindore for Respondent No.2.

CORAM : M. S. SONAK, J.
DATE : 28 MARCH 2018.

P.C. :-

1] The connected Writ Petition No. 4003 of 2017 was disposed of by this court by order dated 25th September 2017, which reads as follows:

“Petitioner has moved for urgent reliefs. Mr. Godbole, learned Counsel states the Respondents have been served.

2 This Petition challenge the order dated 24th October, 2016 passed by 2nd Joint Civil Judge, Junior Division, Vadgaon maval, Pune. By the impugned order, the Petitioners' application that the agreement dated 18th July, 2001 cannot be accepted in evidence in the absence of registration, was rejected.

3 Mr. Godbole, learned Counsel appearing for the Petitioners very fairly states that he would urge the non-sustainability of the impugned order in appeal, if any, filed against the final decree passed in the pending Regular Civil Suit No.50 of 2014. This on the basis of Section 105 of the Code of Civil Procedure, 1908. However, he seeks liberty to cross examine the persons who tenders the agreement dated 18th July, 2001 during the trial without prejudice to his basic contention of the aforesaid agreement dated 18th July, 2001, could not have been received in evidence. Mr. Shah, learned Counsel appearing for Respondent No.2 has no objection. Liberty as prayed for, granted.

4 In the above view, nothing survives in this Petition. Therefore, the Petition disposed of in the above terms. No order as to costs.”

2] In this petition as well, the similar course of action can be followed. There is no necessity to entertain the present petition, however, liberty is granted to the petitioners to challenge the impugned order in case Regular Civil Suit No. 50 of 2014 is finally decided against the petitioners and the petitioners choose to institute any substantive appeal against the same. It is clarified that such liberty will apply even if ultimate decree is in favour of the petitioners and the same is appealed against by the respondents. This is on the basis of Section 105 of the C.P.C.

3] With aforesaid liberty, this petition is disposed of.

(M. S. SONAK, J.)