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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7738 OF 2018

Arvind B. Walvekar	...Petitioner
V/s.	
State of Maharashtra & Ors.	...Respondents

Ms.Shruti Tulpule with Ms.Ketki Gardaki for the Petitioner.

Mr.R.P. Kadam, A.G.P. for the State – Respondent No.1.

Mr.Sandep D. Paigude for the Respondent Nos.2 to 5.

CORAM : R.D. DHANUKA, J.
DATE : 24TH OCTOBER, 2018.

P.C. :-

1. By this petition filed under under Article 227 of the Constitution of India, the petitioner (original plaintiff and the decree holder) has impugned the order dated 13th April, 2018 passed by the learned District Judge – 9, Pune below Exhibit – 124 and granting stay of the execution of the impugned decree passed in Special Civil Suit No.111 of 1974 till next date of hearing of Civil Appeal No.9 of 2016. Learned District Judge has allowed the said Application (Exhibit – 124) filed by the respondent nos.2 to 6 on the ground that by an interim order, the learned District Judge has permitted impleadment of the respondent nos.2 to 6 as the defendants in the

regular civil suit.

2. By a separate order passed in Writ Petition No.12905 of 2017 today, the said order passed by the learned District Judge thereby permitting impleadment of the respondent nos.2 to 6 to the said regular civil suit filed by the petitioner has been quashed and set aside.

3. It is not in dispute that the respondent nos.2 to 6 have already filed a separate application resisting the execution of decree which is pending. In these circumstances, in my view since the order passed by the learned District Judge allowing impleadment of the respondent nos.2 to 6 in the said suit is quashed and set aside, this order passed as consequential order to the earlier order of impleadment, the same also deserves to be set aside.

4. I therefore, pass the following order :-

a). Impugned order dated 13th April, 2018 passed by the learned District Judge – 9, Pune below Exhibit – 124 is quashed and set aside. The Application (Exhibit – 124) filed by the respondent nos.2 to 6 is dismissed.

b). Since the respondent nos.2 to 6 have already filed an application for resisting the decree passed by the learned Trial Court which is the subject matter of the said appeal, the respondent nos.2 to 6 will have liberty to apply for stay of the execution of the decree

before the Executing Court. If any such application is made by the respondent nos.2 to 6, the same would be considered on its own merit.

5. The writ petition is allowed in the the aforesaid terms. There shall be no order as to costs.

6. Learned counsel appearing for the respondent nos.2 to 6 undertakes to file Vakalatnama for the respondent nos.2 to 6 within one week from today. The undertaking is accepted. If the Vakalatnama is filed by the respondent nos.2 to 6 within one week from today, the office is directed to accept the same.

7. All the parties as well as the learned District Judge and also the Executing Court to act on the authenticated copy of this order.

Vasant
Anandrao Idhol

Digitally signed by Vasant
Anandrao Idhol
Date: 2018.10.26 11:49:13
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(R.D. DHANUKA, J.)