

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 10710 OF 2018

Jagannath Babu Shetty through	]	
Power of Attorney Holder	]	
Ranjit Bhojraj Shetty	]	Petitioner
Vs.		
Sumant Sharadchandra Ranade & Ors.	]	Respondents

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Mr. A.V. Anturkar, Senior Advocate i/b Ajinkya Udane i/b Prathamesh B. Bhargude, for petitioner.

Mr. G.S. Godbole, Senior Advocate i/b Sanjay Mehta, for Respondent No.1.

Mr. B.G. Ligade, for Respondents No.2 to 5.

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CORAM: R.G. KETKAR, J.

DATE: 30th OCTOBER, 2018.

P.C:

Heard Mr. Anturkar, learned senior Counsel for the petitioner, Mr. Godbole, learned senior Counsel for respondent No.1 and Mr. Ligade, learned Counsel for respondents No.2 to 5 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant' has challenged the judgment and decree dated 24th July, 2018 passed by the learned District Judge-19, Pune in Regular Civil Appeal No.132 of 2018. By that order, the learned District Judge allowed the appeal preferred by the respondents/plaintiffs and set aside the judgment and decree dated 13th December, 2012 passed by the learned Judge, Court of Small Causes at Pune in R.C.S No.362 of 2009.

3. The Petition was heard at length on 8th October, 2018 and the parties were put to notice that subject to the time constraint and convenience of the Court, the Petition will be disposed of finally on the next date. Accordingly, today I heard learned Counsel for the parties at length.

4. Rule. Mr. Mehta waives service on behalf of respondent No.1 and Mr. Ligade waives service on behalf of respondents No.2 to 5. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of learned Counsel for the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

5. After arguing the Petition for quite some time, Mr. Godbole, on instructions from respondent No.1, who is present in the Court and Mr. Ligade submit that by consent of the respondents, impugned order may be set aside and the appeal may be restored to the file of the learned District Judge. Mr. Godbole has tendered photo copy of Driving Licence of respondent No.1 which is taken on record and marked 'X' for identification. Learned Counsel for the parties assure that they will appear before the learned District Judge on 21st November, 2018 and for that purpose, no fresh notice be issued to them.

6. As recorded in the order dated 8th October, 2018, the learned trial Judge passed order on the application Exhibit 28 to the effect that both the parties are absent, say not filed by the plaintiffs. Defendant to take legal steps. In view thereof, application Exhibit 28 shall stand restored to the file of the learned District Judge. The learned District Judge shall pass appropriate order on the application Exhibit 28 and pursis at Exhibit 46 filed by the plaintiffs. It has also been noted that the defendants had filed application Exhibit 70 on 30th October, 2012. However, no order was passed by the trial Court on that application. The learned District Judge will pass appropriate order on

application Exhibit 70 after considering reply of the plaintiffs at Exhibit 71. All contentions of the parties on applications Exhibit 28 and Exhibit 70 are kept open.

7. In view thereof, Petition is disposed of by consent of the parties in following terms:

- [1] Impugned order is set aside.
- [2] Regular Civil Appeal No. 132 of 2013 is restored to the file of the learned District Judge.
- [3] The parties agree that they will appear before the learned District Judge on 21st November, 2018 and for that purpose no fresh notice be issued to them.
- [4] The learned District Judge will pass appropriate orders on applications Exhibit 28 and 70 after considering plaintiffs' pursis Exhibit 46 and reply Exhibit 71. All contentions of the parties in that regard are expressly kept open.
- [5] The learned District Judge is requested to dispose of the appeal on or before **31st March, 2019**.
- [6] Rule is made absolute accordingly with no order as to costs.
- [7] R & P be sent to the District Court forthwith.

[R.G. KETKAR, J.]