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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12905 OF 2017

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 has impugned the order dated 22nd September, 2017 passed by the learned *Ad-hoc* District Judge – 11, Pune below Exhibit – 95 filed by the third parties for impleadment in the suit under Order I Rule 10(2) of the Code of Civil Procedure, 1908.

2. It is not in dispute that the suit was filed by the petitioner herein only against the State Government. The third parties are not the parties to the said suit. The said suit has already been decreed in favour of the petitioner. This decree has been impugned by the

State Government by filing Regular Civil Appeal No.9 of 2016. During the pendency of the said appeal, the third parties have applied for impleadment as a party defendants to the suit, which is already disposed of. Learned *Ad-hoc* District Judge has allowed the said application (Exhibit – 95) thereby permitting the third parties to be impleaded as party defendants in the said suit. In my view, the impugned order passed by the learned *Ad-hoc* District Judge shows perversity. The suit is already disposed of by the learned Trial Judge which decree is the subject matter of the Regular Civil Appeal No.9 of 2016. No such application for impleadment by a party in a disposed suit could be allowed by the learned *Ad-hoc* District Judge in the pending appeal against the said decree.

3. The impugned order dated 22nd September, 2017 is thus quashed and set aside. It is not in dispute that the third parties have already filed a separate application thereby obstructing a decree which was passed in favour of the petitioner and which is the subject matter of Regular Civil Appeal No.9 of 2016. The said notice is still pending before the Executing Court. In these circumstances, and for reasons recorded aforesaid, I pass the following order :-

a). The order dated 22nd September, 2017 passed by the learned District Judge – 11, Pune below Exhibit – 95 is quashed and set aside. The Application (Exhibit – 95) filed by the third parties who

are the respondent nos.2 to 6 in this writ petition is dismissed.

b). The writ petition is allowed in the the aforesaid terms.

There shall be no order as to costs.

Vasant
Anandrao Idhol

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