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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12162 OF 2018

|                       |                |
|-----------------------|----------------|
| Naresh S. Mane & Anr. | ...Petitioners |
| V/s.                  |                |
| MHADA & Anr.          | ...Respondents |

Mr.Manoj G. Sawardekar for the Petitioners.

Ms.Manisha Jagtap for the Respondent No.1.

**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 petitioners have impugned the order dated 21<sup>st</sup> August, 2018 passed by the learned Trial Judge dismissing the Notice of Motion No.3233 of 2016 for default and consequently dismissing the Notice of Motion No.1444 of 2017 as infructuous.

2. Learned counsel appearing for the petitioners states that the earlier advocate representing the petitioners did not remain present before the learned Trial Judge and both these notices of motion were accordingly dismissed.

3. It is not in dispute that the learned Trial Judge had passed an order of *status-quo* in favour of the petitioner in the Notice of

Motion No.3233 of 2016 which was in force till 21<sup>st</sup> August, 2018 when the notice of motion came to be dismissed for default. In these circumstances, I am inclined to give a last opportunity to the petitioner to pursue the said notice of motion on its own merit without committing any further default however on the condition that the petitioner pays Rs.10,000/- to the respondent no.1 within two weeks from today. The impugned order dated 21<sup>st</sup> August, 2018 is accordingly quashed and set aside on the condition that the petitioner pays the costs of Rs.10,000/- to the respondent no.1 within two weeks from today and shall produce a proof of payment of such cost before the learned Trial Judge.

4. It is made clear that *ad-interim* order which was in force on the date of dismissal of the notice of motion on 21<sup>st</sup> August, 2018 is also restored till the disposal of the Notice of Motion No.3233 of 2016. In view of restoration of the Notice of Motion No.3233 of 2016, the Notice of Motion No.1444 of 2017 filed by the respondents is also restored to file.

5. Affidavit in reply, if any, to the Notice of Motion No.1444 of 2017 shall be filed within one week from today and a copy thereof shall be served upon the petitioner's advocate simultaneously. Rejoinder, if any, shall be filed within one week from the date of service of the affidavit in reply and a copy thereof shall be served

upon the respondents' advocate simultaneously. It is made clear that no further extension of time would be granted. If the affidavit in reply is not filed within the time prescribed in this order, the learned Trial Judge shall proceed with the hearing of the notice of motion without any affidavit from the respondents. Learned Trial Judge shall make an endeavor to dispose of both the notices of motion within eight weeks from the date of filing of the pleadings.

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

7. The petitioners are directed to convey this order to the learned Trial Judge for information and compliance.

8. All the parties as well as the learned Trial Judge to act on the authenticated copy of this order.

Vasant  
Anandrao Idhol

Digitally signed by Vasant  
Anandrao Idhol  
Date: 2018.10.26 11:49:44  
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**(R.D. DHANUKA, J.)**