

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**APPEAL FROM ORDER NO.19 OF 2019 WITH
CIVIL APPLICATION NO. 3342 OF 2019 IN AO/19/2019**

**MANEJI GANGARAM TIPARSE
VERSUS
RAMJI BABARAO PALLEWAR**

...
Advocate for the Appellant : Shri N. G. Kale

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 8th MARCH, 2019.

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PER COURT :

1. The appellant is aggrieved by the judgment and order dated 04/10/2018 delivered by the first appellate Court, by which, RCA No. 81/2018 filed by the sole original defendant, has been allowed and the judgment dated 15/01/2018 delivered in RCS No. 43/2014 by the Trial Court is quashed and set aside. The suit is remitted to the Trial Court for enabling the defendant to file his written statement and participate in the trial.

2. The learned Advocate for the appellant has strenuously criticized the impugned order and he draws my attention to

the grounds formulated by him for assailing the same. He contends that though notice was served on the defendant and he appeared in the matter through an Advocate, he failed to participate in the trial. He, therefore, submits that such negligence on the part of the defendant cannot be tolerated and he does not deserve any sympathy. The suit of 2014 has been decided and the clock would be reversed by four years if the suit is to be re-opened.

3. Though I find that the learned Advocate is right to some extent in contending that a defendant cannot be negligent, I am of the view that as an immovable property is involved in the suit and which was decided without contest, he cannot be made to suffer such a heavy price of practically being precluded from participating in the said matter. Even if the matter is remitted to the Trial Court, the clock would be reversed by about three years. The suit can be expedited since it is more than five years old and that would take care of the anxiety of the plaintiff.

4. This A.O. is, therefore, disposed off. It is however,

directed that the Trial Court shall decide RCS No. 43/2014 as expeditiously as possible and in any case on or before 31/03/2020. The defendant shall be precluded from seeking adjournments on unreasonable grounds.

5. Consequentially, the pending Civil Application does not survive and stands disposed off.

(RAVINDRA V. GHUGE, J.)

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