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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.818 OF 2016

Sou. Maimunissa Sikandar Jamadar

..Petitioner.

V/s.

Dastagir Noorchaman Mulla & Ors.

..Respondents.

Mr.Akshay P.Shinde for the petitioner.

None for the respondents.

CORAM : M.S.SONAK, J.

DATE : APRIL 5, 2019

ORAL JUDGMENT

Heard Mr.Shinde, learned counsel for the petitioner.

2. On March 15, 2016, this Court made the following order:-

“ Heard Mr. Shinde, learned Counsel for petitioner. Leave to amend so as to add prayer for challenging the order dated 14.02.2014 is granted. Amendment shall be carried out forthwith.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 14.02.2014 below below exhibit-144 as also the judgment and order dated 27.10.2015 below exhibit-155 in Regular Civil Suit No.223 of 2003 passed by the learned 3rd Joint Civil Judge, Junior

Division, Ichalkaranji. By order dated 14.02.2014 below exhibit-144, the learned trial Judge rejected the application made by the petitioner for impleadment on the ground that petitioner and her Advocate were absent. Apart from that, exhibit-144, the learned trial Judge rejected the application made by the petitioner for impleadment on the ground that petitioner and her Advocate were absent. Apart from that, the learned trial Judge, on merits, also rejected the application. Petitioner thereafter filed application exhibit-155 under Order I, Rule 10 of C.P.C. for impleading her in the Suit as defendant. That application was rejected on the ground that previous application filed by the petitioner for the same relief was rejected on 14.02.2014 on merits.

3. Issue notice to the respondent No.1 for the time being, returnable on 05.04.2016. Notice to indicate that subject to the time constraint and convenience of the Court, Petition will be disposed of finally at the stage of admission. Notice to further indicate that despite service if respondent No.1 fails to appear, the Court will proceed to decide the Petition on its own merits. Petitioner shall deposit cost of Rs.15,000/- in this Court within 2 weeks from today. Till next date, there shall be ad-interim order in terms of prayer clause (c).

4. It is made clear that if amount of Rs.15,000/- is not deposited in this Court within 2 weeks from today, ad-interim order shall stand vacated without further reference to the Court.”

3. Mr.Shinde points out that the respondents are served. He points out even the costs of Rs.15,000/- have been deposited by the

petitioner.

4. Challenge in this petition is to the orders dated February 14, 2014 (below Exhibit-144) and October 27, 2015 (below Exhibit-155) in Regular Civil Suit no.223/2003 made by learned trial Judge. By applications Exhibits-144 and 155, the petitioner had applied for impleadment in the suit *inter alia* on the ground that the allegations have been made against the petitioner and even relief is claimed against the petitioner.

5. The record reveals that the application Exhibit-155 came to be dismissed by an order dated October 27, 2015 on the ground that similar application i.e. application at Exhibit-144 was already dismissed vide order dated February 14, 2014. Learned trial Judge has, therefore, invoked the principles of *res judicata* in so far as the petitioner's application at Exhibit-155 was concerned.

6. In this petition, the petitioner has also challenged the order dated February 14, 2014 below Exhibit-144. Perusal of the said order reveals that the same was decided by learned trial Judge in absence of either the petitioner or his advocate.

7. In the application made by the petitioner at Exhibit-155, the petitioner had explained the circumstances in which she and her advocate could not remain present in the Court when the application Exhibit-144 came to be disposed of by an order dated February 14,

2014. The petitioner has explained that she is aged about 70 years and residing at Belgaum and her advocate could not attend the Court on account of his ill-health. Mr.Shinde states that the said advocate was, therefore, replaced with another advocate by the petitioner.

8. According to me, the petitioner deserves to be granted one more opportunity to pursue her application below Exhibit-144. The explanation by the petitioner constitutes sufficient cause. The petitioner is a Muslim lady and she has pointed out that due to financial condition, she could not attend the Court or arrange for the advocate to attend the Court. Accordingly, the order dated February 14, 2014 below Exhibit-144 is set aside.

9. As a consequence of the aforesaid, even the order dated October 27, 2015 below Exhibit-155 is required to be set aside and is accordingly set aside.

10. Learned trial Judge is directed to hear the petitioner's applications at Exhibits-144 and 155, since both the applications seek the same relief i.e. impleadment in the suit afresh on their own merit and in accordance with law. Learned trial Judge to dispose of both these applications as expeditiously as possible and in any case within a period of three months from the date the authenticated copy of this order is presented before him.

11. Needless to add, learned trial Judge will grant opportunity

to both the plaintiff and defendants to the suit to make their submissions on the said two applications.

12. Rule is made absolute in the aforesaid terms.

13. The costs of Rs.15,000/- deposited in this Court be transmitted to the Court of Civil Judge, J.D. Ichalkaranji in Regular Civil Suit No.223/2003. The costs be paid to the original plaintiff in the suit.

14. Learned trial Judge to inform the plaintiff that they will be at liberty to withdraw this costs unconditionally.

15. Mr.Shinde, learned counsel for the petitioner states that the copy of this judgment and order will also be served upon the plaintiff in the suit.

16. Interim order granted in this petition is hereby vacated.

17. The petitioner to appear before the learned trial Judge on April 27, 2019 at 11.00 a.m. Learned trial Judge to issue notices to the plaintiff and defendants in the suit before the petitioner's applications at Exhibits-144 and 155 are taken up for consideration.

18. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)