

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7145 OF 2015

Swati Satish Talim & Anr.

...Petitioners

Vs.

Zarin Aziz Shaikh

...Respondent

**Mr. Sandesh Shukla a/w. Mr. Amit Singh
I/b Mr. Santosh Sawant, for the Petitioners
Mr. Deepak Girme, for the respondent**

CORAM : M. S. SONAK, J.

DATE : APRIL 18, 2019

ORAL JUDGMENT:

1. Heard Mr. Sandesh Shukla for the petitioners and Mr. Deepak Girme for the respondent.
2. Rule. Rule is made returnable forthwith with the consent of and at the request of Ld. Counsel for the parties.
3. Challenge in this petition is to the order dated 26/11/2014 by which the Ld. Trial Judge has virtually set at naught his Predecessors order dated 2/12/2011.
4. Ld. Trial Judge by order dated 2/12/2011 had held following :

“ **ORDER**

1. *Application is allowed.*
2. *The plaintiff to value the suit as per market value of the suit property for the prayer of specific performance.*
3. *Inquiry be held under Section 8 of The Bombay Court Fees Act for determining the market value of the suit property.”*

5. From the aforesaid, it is clear that the Ld. Trial Judge was required only to determine the market value of the suit property and thereafter required the plaintiff to pay the appropriate Court fee and make the appropriate valuation.

6. The impugned order dated 26/11/2014 further reads the following.

“ **ORDER**

1. *The plaintiff has correctly valued the suit for pray of specific performance of contract u/s. 6(iv)(j) of Bombay Court Fees Act, 1959. Therefore, no need to pass any further order in regard to court fees and the market value of the suit property.*
2. *Plaintiff and defendants are hereby directed to proceed with the case for further stage of the matter.”*

7. From the aforesaid, it is clear that Ld. Trial Judge has not determined the market value of the suit property but proceeded virtually to set aside the order dated 2/12/2011 made by his Predecessor. In the absence of any review petition, filed by the respondents, such course of action was clearly not permissible to the Ld. Trial Judge.

8. On the aforesaid short ground, the impugned order dated 26/11/2014 is hereby set aside. However, liberty is granted to the respondents to take out review petition against the order dated 2/12/2011.

9. Ld. Counsel for the respondents state that review against the order dated 2/12/2011 will be filed within four weeks from today. If the review petition is indeed filed within four weeks from today then Ld. Trial Judge is directed to dispose of the same in accordance with law and on its own merits without going into the issue of limitation.

10. Mr. Shukla, Ld. Counsel for the petitioners further submits that until the review petition is decided, further trial in the suit be stayed. This position is agreeable to the Ld. Counsel for the respondents.

11. Accordingly, Ld. Trial Judge is directed to dispose of review

petition if instituted within four weeks from today and until the review petition is disposed of further trial in the suit is stayed.

12. All contentions of the parties except the issue of limitation in existing review petition are kept open.

13. Rule is made absolute in the aforesaid terms.

14. There shall be no order as to costs.

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

(M. S. SONAK, J.)