

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6708 OF 2018

Bhagwandas Lokram Dodeja (decd) through LRs ... Petitioners
Vs.
Shalini Vishwanath Redij (decd) through LRs ... Respondents

Mr. Ravi G. Shinde for Petitioners.
Mr. G. S. Godbole, Senior Advocate i/b. Mr. S. S. Kanetkar for Respondents.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 22, 2019

P.C. :

Heard Mr. Shinde, learned Counsel for the petitioners and Mr. Godbole, learned Senior Counsel for the respondents at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and decree dated 08.02.2018 passed by the learned Ad-hoc District Judge, Pune in Civil Appeal No.239 of 2011. By that order, the learned District Judge-1, Pune allowed the appeal preferred by the respondents and set aside the judgment and decree dated 25.01.2011 passed by the learned Judge, Small Causes Court, Pune in Civil Suit No.521 of 2008 and dismissed the Suit.

3. Rule. Mr. Kanetkar waives service for the respondents. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. Mr. Godbole states that respondent No.1A is present in the Court. He has tendered photocopy of his Aadhar Card, which is taken on record

and marked 'X' for identification. After arguing the petition for quite some time, Mr. Godbole, on instructions, submits that the impugned order may be set aside and Civil Appeal may be restored to the file of the District Court. He further seeks permission to withdraw application exhibit-62 with liberty to file fresh application under Order XLI, Rule 27 of the Code of Civil Procedure, 1908 (for short 'C.P.C.').

5. Mr. Shinde submitted that in case the Court is permitting the respondents to withdraw the application exhibit-62 filed under Order XLI, Rule 27 of C.P.C., liberty may be reserved to the petitioners to file reply.

6. In view thereof, by consent of the parties, Petition is disposed of in the following terms:

- a. Impugned order dated 08.02.2018 passed by the learned Ad-hoc District Judge, Pune in Civil Appeal No.239 of 2011 is set aside and Civil Appeal is restored to the file of the learned District Judge to its original position;
- b. Respondents are permitted to withdraw application dated 07.07.2017 at exhibit-62 filed in Civil Appeal No.239 of 2011 with liberty to file fresh application under Order XLI, Rule 27 of C.P.C. Application shall be filed within a period of 6 weeks from today and copy thereof shall be served on the other side during that period. The petitioners shall file reply within four weeks from the date of receipt of the application;
- c. The learned District Judge will first decide the application under Order XLI, Rule 27 of C.P.C. and thereafter will proceed with the hearing of the Appeal;

- d. All contentions of the parties on merits are expressly kept open;
- e. The parties will appear before the learned District Judge on 12.02.2019 and for that purpose, no fresh notice be issued to them. On that date, the learned District Judge will fix a suitable date and proceed thereafter;
- f. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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