

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1196 OF 2019

Hemant Ashok Pawar (Marathe) and anr. .. Petitioners
Vs.
The State of Maharashtra and ors. .. Respondents

Mr.P.B.Shah a/w Ms.Gunjan Shah I/b Mr.Kayval P. Shah, for the
Petitioner.
Mr.R.M. Shinde, AGP for State.

CORAM : M.S.KARNIK, J.

DATE : 07th FEBRUARY, 2019

P.C. :

. This is a Petition filed by the original defendants No. 14 and 15 challenging the order dated 11/04/2018 passed below Exhibit 36 in Regular Civil Suit No. 498 of 2014 by 7th Joint Civil Judge, Senior Division, Nashik. The application below Exhibit 36 was filed by the petitioners/original defendants No. 14 & 15 seeking rejection of plaint.

2. With the assistance of the learned Counsel for the

petitioner, I have gone through the impugned order which is at page 221 of the paper-book. In paragraph 4 of the order, argument of the plaintiff is recorded that the present plaintiff was neither a party to the compromise before the High Court nor he moved any application in the darkhast proceeding whereby it has been disposed of. Learned Counsel appearing for the petitioner - Mr.Shah invites my attention to the copy of the consent terms filed in this Court. It is brought to my notice that the plaintiff was very much a party to the consent terms.

3. Be that as it may, the trial Court appears to have proceeded on the footing that as the application was moved under Order 7 Rule 11(d) of C.P.C. and as the defendants No.14 and 15 could not cite any particular provisions of law by which the Suit is barred, the trial Court rejected the application. Learned Counsel for the petitioner, on the other hand, submits that the trial Court ought to have invoked the provisions of Section 151 of C.P.C. In this view of the matter, learned Counsel for the petitioner submits that he would file a fresh

application before the trial Court seeking appropriate relief invoking the provisions of Section 151 of C.P.C. In the event such an application is filed, the trial Court shall decide the same on its own merits without being influenced by any observations made in the order dated 11/04/2018 and in accordance with law.

4. With these observations, the Petition is disposed of. Needless to mention that the trial Court may decide the application filed by the petitioner on its own merits. It is made clear that I have not made any observations on merits of the matter.

(M.S.KARNIK, J.)