

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

WRIT PETITION NO.134 OF 2019

Manjula Kishore Shah and Ors. .. Petitioners

vs.

Purnima Pravin Shah and Ors. .. Respondents

Mr.S.A.Jabbar I/b Mr.Tanvir A.H.Shaikh for the petitioner
Mr.H.T.Pawar for the respondent nos.1 to 3
Mr.Salil Dabake I/b M/s.Diwekar and Co. for the respondent no.4

CORAM: K.K. TATED, J
DATED : JANUARY 31, 2019

P.C. :

1 Heard.

2 By this petition under Article 227 of the Constitution of India, the Petitioner original defendant no.1 challenges the order dated 28.11.2018 passed by City Civil Court at Dindoshi, Borivali Division, Mumbai in Notice of Motion No.2127 of 2013 in Special Civil Suit No. 1449 of 2008 allowing plaintiff's Notice of Motion for permitting them to withdraw 50% amount lying with the Court Receiver.

3 Bare reading of the order dated 28.11.2018 shows that said order was passed by the Trial Court on the basis of affidavit in reply filed by the petitioner which is dated 03.09.2015, in which they admitted that the respondent original plaintiff have 50%

share. Paragraph 7 of the said order reads thus:

“7. The perusal of the affidavit-in-reply dtd.03/09/2015 shows that the defendant Nos.1 to 4 agreed that the plaintiffs and the defendants have got 50% share each in the business of the partnership firm. The same appears to have been signed by their learned counsel, as well. If being so, at this stage, there is absolutely no prima facie substance in the contention that the signatures were got obtained by playing fraud on the said affidavit-in-reply.”

4 Considering these facts, impugned order was passed by the trial court on the basis of affidavit in reply filed by the petitioner, I do not find any reason to entertain the present Writ Petition.

5 At this stage, the learned counsel for the petitioner submits that petitioner original defendant no.1 to 4 may be permitted to file appropriate application under section 8 of the Bombay Court Fees Act, 1959 for valuation of the suit.

6 It is to be noted that the learned counsel for the petitioner does not require any permission from the court. They have the right to file the same on their own.

7 Hence, following order is passed:

- a. Writ Petition is rejected.
- b. No order as to costs.

(K.K. TATED, J.)