

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11384 OF 2019
WITH
CIVIL APPLICATION NO.2980 OF 2020

BABURAO JAYRAM PATIL THROUGH LRS SHAKUNTALA SHIVAJIRAO
AHIRRAO AND OTHERS
VERSUS
ROHINI SANJAY PATIL AND OTHERS

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Advocate for Applicants : Mr. Kazi Fatema S.
Advocate for Respondents : Mr. S.P. Brahme
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CORAM : V. K. JADHAV, J.
DATED : 13th MARCH, 2020

PER COURT:-

1. In terms of order dated 21.9.2019 passed by this Court, this writ petition can be disposed of. The petitioner has filed an application Exh.13 under Order 41 Rule 27 of C.P.C. in the appeal pending before the District Court. However, by impugned order 19.11.2018 the learned District Judge, Shahada rejected the said application Exh.13 filed in R.C.A. No. 12 of 2018. This Court in the order dated 21.9.2019 in para 2 by referring the various judgments of the Apex Court, in para 3 observed that in the light of the ratio laid down by the Supreme Court, the petitioners could have had the opportunity of seeking appropriate orders on Exh.13 under Order 41 Rule 27 alongwith the main appeal.

2. In view of above, the impugned order is hereby quashed and set aside with direction that the learned District Judge-1, Shahada

District Nandurbar shall consider the application Exh.13 filed under Order 41 Rule 27 of C.P.C. alongwith the main appeal.

3. Pending this writ petition, the petitioners have also filed civil application No. 2980 of 2020 for staying the effect of the order impugned in the appeal. The petitioners would be at liberty to file similar application before the District Court, Shahada in the aforesaid pending appeal and upon filing such application seeking stay to the impugned order in the appeal, the learned District Judge, Shahada shall decide the application forthwith.

4. Writ petition is accordingly disposed of. Pending civil application is also disposed of.

(V. K. JADHAV, J.)

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