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

WRIT PETITION NO. 12545 OF 2019

Sanjeev K. Martand & ors.

.Petitioners

Vs.

Subhash Rupchand Thavani

.Respondent

Mr. Surel S. Shah i/b. Mr. V. R. Gaikwad, Advocate, for the Petitioners
Mr. Nikhil Wadikar i/b. Mr. N. V. Pawar, Advocate, for the Respondent

CORAM : REVATI MOHITE DERE, J.

DATE : 28.01.2020

P. C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioners have impugned the order dated 20.11.2019 passed by the learned 3rd Jt. C. J. S. D., Satara below Exh. 78 in Special Civil Suit No. 48 of 2012. As far as the order passed below Exh. 79 is concerned, learned counsel for the Petitioners does not press the Petition qua the said order. Learned counsel in the course of his submissions relied upon the Full Bench Judgment in the case of ***Hemendra Rasiklal Ghia Vs. Subodh Mody***, reported in **2008(6) ALL MR 352**. He submits that the said Judgment was not shown to the learned Judge, when the Application (Exh. 78) was being argued. He submits that the Petitioners be permitted to raise all contentions taken in the Application (Exh. 78) at the time of the final arguments before the trial Court. He submits that the Petitioners may also be permitted to rely

upon the Full Bench Judgment mentioned supra.

3. Learned counsel for the Respondent opposes the Petition. He submits that no interference is warranted in the impugned order.

4. Perused the papers including the impugned order. Admittedly, the Judgment of the Full Bench was not before the trial Court, when the impugned order was passed. It appears that the matter is posted for hearing the final arguments of the Petitioners. Since the matter is posted for final arguments, it is open for the Petitioners to raise the grounds mentioned in the Application (Exh. 78) filed by the Petitioners as well as the Judgment of the Full Bench alongwith all other grounds at the time of final arguments before the trial Court.

5. The learned trial Judge to consider the said submissions uninfluenced by the impugned order dated 20.11.2019, on its own merits and in accordance with law. All contentions of both the parties are kept open.

6. Accordingly, the Petition is disposed of in the aforesaid terms.

(REVATI MOHITE DERE, J.)