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

WRIT PETITION NO.1336 OF 2020

Yashwant Moreshwar Manwacharya ... Petitioner
Versus
Kamal Ramchandra Manwacharya and Ors. ...Respondents

Mr. V. D. Patil i/b Mr. A. T. Gade, for the Petitioner.

Mr. A. S. Malviya a/w Mr. Kailash Baug, for Respondent Nos.1 to 7.

CORAM : REVATI MOHITE DERE, J.

DATE : 3rd MARCH, 2020

P.C. :

1. Heard learned counsel for the parties.
2. By this Petition, the Petitioner has impugned the order dated 19th November, 2019, passed by the learned 3rd Joint Civil Judge, Senior Division, Thane, below Exhibit – 41 in Regular Civil Suit No.22 of 2017, by which, the learned Judge was pleased to reject the petitioner's application under Order VII, Rule 11 of the Code of Civil Procedure.
3. A perusal of the impugned order does not show that the said application (Exhibit - 41) filed by the petitioner has been considered on merits.

4. Learned Counsel for the Respondent Nos.1 to 7 also does not dispute the same.

5. Considering the aforesaid, without going into the merits, it would be appropriate to quash and set aside the impugned order dated 19th November, 2019, passed by the learned 3rd Joint Civil Judge, Senior Division, Thane, below Exhibit – 41 in Regular Civil Suit No.22 of 2017, and remit the application back to the trial Court, for fresh consideration.

6. Accordingly, the impugned order dated 19th November, 2019, passed by the learned 3rd Joint Civil Judge, Senior Division, Thane, below Exhibit – 41 in Regular Civil Suit No.22 of 2017, is quashed and set aside and the application (Exhibit – 41) is restored back to its original file. The learned Judge to decide the said application, on its own merits, in accordance with law, after hearing both the parties, uninfluenced by its earlier order.

7. Petition is accordingly disposed of. All contentions of all the parties are kept open.

8. It is made clear, that the petition has not been considered on merits.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.