

Anand

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

WRIT PETITION NO. 1184 OF 2020

Ganpat Govind Shigwan

.Petitioner

Vs.

Mrs. Preeti Paresh Shah

.Respondent

Dr. Abhinav Chandrachud & Mr. S. Shetye i/b. Mr. T. Chaudhary &
Mr. A. M. S. Solkar, Advocate, for the Petitioner
Mr. P. Shah a/w Mr. D. Shah, Advocate, for the Respondent

CORAM : REVATI MOHITE DERE, J.

DATE : 11.02.2020

P. C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioner has impugned the order dated 04.03.2019 passed by the learned Judge, City Civil & Sessions Court, Greater Mumbai, in Notice of Motion No. 3475 of 2017 in Suit No. 4218 of 2010, by which the Petitioner's prayer for return of the plaint for proper presentation before the appropriate Court was rejected.

3. The principal submission of the learned counsel for the Petitioner was that the Notice of Motion was filed under O. VII, Rule 10 of the Code of Civil Procedure (for short 'C. P. C.') and as such, it was incumbent on the trial Court to decide the same forthwith. He submitted

that the decision on an Application filed under O. VII, Rule 10 of the C. P. C. cannot be postponed, for deciding the same at the time of final Judgment. Learned counsel relied on the Judgment of the Apex Court in ***Prabhudas Damodar Kotecha And Others Vs. Manhabala Jeram Damodar And Anr.***, reported in ***(2013) 15 Supreme Court Cases 358*** ; and of the Bombay High Court in ***Chandra Prem Shah And Others Vs. K. Raheja Universal Pvt. Ltd. And Anr.***, reported in ***2015 (5) Mh. L. J. 715.***

4. In view of the submissions advanced by the learned counsel for the Petitioner, learned counsel for the Respondent / Plaintiff states that he has no objection, if the impugned order is quashed & set aside and if the matter is remitted back to the trial Court for fresh consideration in view of the legal position.

5. In view of the aforesaid, the impugned order dated 04.03.2019 passed by the learned Judge, City Civil & Sessions Court, Greater Mumbai in Notice of Motion No. 3475 of 2017 in Suit No. 4218 of 2010 is quashed and set aside. The Notice of Motion is restored back to its original file. The learned trial Judge to consider the said Notice of Motion on its own merits, in accordance with law. All contentions of all parties are kept open.

6. It is made clear, that this Court has not considered the Petition on merits and has quashed & set aside the impugned order only on the ground, that an Application filed under O. VII, Rule 10 of the C. P. C. needs to be decided forthwith and the said question cannot be postponed for decision at the time of final Judgment.

7. Accordingly, the learned Judge to decide the said Notice of Motion within eight weeks from the date of receipt of this order.

8. Accordingly, the Petition is disposed of on the aforesaid terms.

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

(REVATI MOHITE DERE, J.)