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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO. 13265 OF 2017
WITH
INTERIM APPLICATION NO. 3083 OF 2020
WITH
INTERIM APPLICATION NO. 3053 OF 2020**

Shri. Balaji Sayanna YejjaPetitioner

V/s.

Smt. Shashikala Laxminarayan Gandhi andRespondents
others

**WITH
WRIT PETITION NO. 4162 OF 2017
WITH
CIVIL APPLICATION NO. 1741 OF 2019**

Smt. Shashikala Laxminarayan Gandhi andPetitioners
others

V/s.

Shri. Balaji Sayanna YejjaRespondents

Mr. Rakesh Reddy for the Petitioners in WP 13265/2017 and for Respondent in WP 4162/2017 and applicant in both IA
Mr. Ashok Tajane for Respondent nos. 1 to 6 in WP 13265/2017 and for petitioner in WP 4162/2017 and for applicant in both connected IA

CORAM : NITIN W. SAMBRE, J.

DATE: JULY 28, 2021.

P.C.:

1] Writ Petition No. 13265/2017 is filed against the order passed by the Civil Judge Senior Division in Special Civil Suit No. 294/1988 Solapur on the issue of jurisdiction against the petitioner-plaintiff.

2] I am informed that Suit is already decreed on 05/12/2002 and First Appeal is pending adjudication before the learned District Judge.

3] In that view of the matter, in my opinion, present petition has rendered infructuous and is accordingly disposed of. However, disposal of present writ petition shall not preclude the petitioner from raising the issue of jurisdiction in pending First Appeal in accordance with law.

4] As a consequence of disposal of Writ Petition, all connected interim/civil applications stand disposed of.

5] As far as Writ Petition No. 4162/2017 is concerned, this petition is by judgment-debtor in decree for specific performance passed in Special Civil Suit No. 294/1988. Orders which are challenged are permitting the decree holder to deposit amount of consideration, order staying the execution of the decree and also order permitting the decree holder to serve the petitioner through paper publication.

6] As far the order permitting the decree-holder to serve the petitioner by paper publication is concerned, the cause in the same has rendered infructuous as Mr. Ashok Tajane assures that in view of present petition, they shall appear in the pending appeal by accepting the service.

7] In that view of the matter, paper publication is no more require consideration.

8] As far as the issue of permitting respondent-decree holder to deposit the decretal amount is concerned, such order of deposit is always without prejudice to the rights and contentions of the

petitioner-judgment debtor to the said decree. It is expected of Appellate Court to deal with the issue, if so raised by the petitioner about the effect and consequence of the order permitting deposit of the amount beyond the period prescribed in the decree. As such, petition to that extent permitting respondent-decree-holder to deposit the amount also does not call for any interference.

9] As far as the order dated 23/09/2016 passed by the Appellate Court whereby staying the execution of the decree in Special Civil Suit No. 294/88 is concerned, Appellate Court is directed to deal with application for condonation of delay preferred by the respondent decree-holder in the pending appeal expeditiously and in any case shall decide the same within period of 12 weeks from the date of production of this order as Mr. Tajane has already assured this Court that petitioners will be directed to appear in the said matter. As such, service on non-applicant on the said application for condonation of delay is complete. No fresh notice is required. Both parties to the petition assure that they shall appear before the Appellate Court on 09/08/2021.

10] As far as Civil M.A. No. 333/2014 initiated by the petitioner-judgment debtor is concerned, let the said proceedings be continued. However, no final order be passed therein until in the Appellate court proceedings at the behest of decree holder/respondent for condonation of delay are decided, as has been directed by this Court vide above order.

11] In view of above observations, Writ Petition No. 4162/2017 stands disposed of.

12] As a consequence of disposal of Writ Petition No. 4162/2017, all connected interim/civil applications stand disposed of accordingly.

[NITIN W. SAMBRE, J.]