

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.1662 OF 2021**

Bansidhar Annaji Bhakad .. Petitioner

Vs.

Ismail Yusuf College & Ors. .. Respondents

...

Mr. R.V. Govilkar i/b Mr. Jayraj for the petitioner.

Mr. V.S. Gokhale, 'B' Panel counsel for the State.

...

**CORAM : SMT. BHARATI DANGRE, J.**

**DATED : 13<sup>TH</sup> DECEMBER, 2021.**

**P.C:-**

1. In furtherance of the earlier order dated 16/11/2021, the record of the proceedings of Suit No.8431 of 1995 is received.
2. When the record is perused to ascertain whether there was compliance of the directions issued by this court, where the learned Judge was directed to decide the Notice of Motion No.3988 of 2017 filed in the suit and which was kept pending,

AJN

the order dated 28/10/2020 was noticed by me. When this court directs the City Civil Court at Mumbai to dispose of the notice of motion, necessarily, it intended that the notice of motion be decided on its merits and not simplicitor disposal. With an expectation that this must be only the operative order, when the record and proceedings are perused by me, unfortunately, the order dated 28/10/2020 appear to be the only order which learned Judge has passed on Notice of Motion No.3988 of 2017.

3. It is always open for me to issue notice to the learned Judge to show cause as to why, he did not adhere to the order passed by this court, but this would be again a wastage of time. In this contingency, learned City Civil Court at Bombay, who is in seisin of the Short Cause Suit No.8431 of 1995 is directed to decide Notice of Motion No.3988 of 2017 by which the plaintiff has sought striking of defence by the defendants and rejection of their written statement as the defendants have failed to give inspection of the documents in pursuance of order dated 13/08/2007 passed by the High Court. The notice of motion, which is supported by the affidavit filed by the plaintiff in support of the prayers, ought to have decided on its merits. Instead, when the High Court directed that the notice of motion be disposed of, learned Judge has disposed of the notice of motion without considering the same on merits.

4. The Notice of Motion No.3988 of 2017, which is pending

since then, shall be decided on its merits by learned Judge within a period of four weeks from today. The record and proceedings, which are received by this court shall be transmitted forthwith to the learned Judge so that he shall take up the notice of motion for hearing immediately.

5. With the aforesaid direction, the writ petition is disposed of.

**[SMT. BHARATI DANGRE, J.]**