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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7550 OF 2011

Sidhavvabai Gurupadayya Hiremath & Ors.] .. Petitioners

vs.

Gopalrao Putturao Raikar]
(Deceased Through Lrs) & Ors.] .. Respondents

Mr.Samir A. Kumbhakoni for Petitioners.

Ms.Lalita Savekar i/b Kulkarni & Associates for Respondent No.2.

CORAM : N.R.BORKAR, J.

DATE : 16TH FEBRUARY 2022

P.C.

1] This Petition takes an exception to the order dated 21.03.2011 passed by the learned District Judge, Solapur, below Exhibit 31 in Civil Appeal No.184 of 2000.

2] The Petitioners herein have filed the aforesaid Appeal against the Judgment and Decree dated 06.04.1998 passed by the 4th Joint Civil Judge, Senior Division, Solapur in Special Civil Suit No.69 of 1992.

3] In Appeal, an application was filed by the Petitioners-original defendants in above Suit, under Order 6 Rule 17 for amending the written statement. The application was allowed by order dated 04.03.2011 subject to costs of Rs.500/- and the Petitioners were directed to carry out amendment on the very same day.

4] It appears that the petitioners, however, failed to deposit the amount of costs and carry out the amendment. The application was therefore moved on 14.03.2011 seeking permission to deposit the costs and to carry out amendment. The learned District Judge rejected the said application by the order impugned.

5] I have heard the learned counsel for the Petitioners and the learned counsel for the Respondents.

6] I have perused the application at Exhibit 31. The specific ground was raised in the application at Exhibit 31, that due to non-availability of the order dated 04.03.2011, the Petitioners could not deposit the amount of costs. The learned District Judge rejected the application by one line order, on the ground that the counsel was aware about the order passed. The learned District Judge has not at all dealt with the ground raised in the application at Exhibit 31 as to whether it was valid or not. If the order was not available, then no fault can be found with the non-deposit of amount of costs by the Petitioners and the learned District Judge ought not to have rejected the application on the ground that the counsel was aware about the order passed.

7] Considering the above facts and circumstances, following order is passed :

- i] Writ Petition is allowed.
- ii] The order impugned dated 21.03.2011 is set aside.
- iii] The Petitioners are granted two weeks time to deposit the amount of costs of Rs.500/-. The learned District Judge shall permit the Petitioners to carry out amendment as per order passed by it dated 04.03.2011.

iv] As the appeal is of the year 2000, the learned District Judge shall endeavour to decide the Appeal as expeditiously as possible, but in any case, within a period of one year from the date of receipt of copy of this order.

[N.R.BORKAR, J]