

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 3360 OF 2022

Dr. Shailendra alias Shailesh Purshottamrao -- Petitioners
Deshmukh and another

Vs.

Vimlabai w/o Bhaskarrao Deshmukh (Dead) -- Respondents
through LRs an others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P.K. Mohta, Advocate for Petitioners

CORAM : MANISH PITALE, J.

DATE : 22nd JUNE, 2022

By this writ petition, the petitioners are seeking limited relief as regards their preliminary objection about maintainability of cross objection filed by respondents in Regular Civil Appeal No. 39/2012.

2. Although the learned counsel for the petitioners sought to demonstrate how the preliminary objection ought to be upheld, a perusal of the impugned order shows that the Appellate Court has only observed that the preliminary objection about maintainability raised by the petitioners shall be considered at final hearing of the cross objection.

3. This Court has also taken note of the fact that in response to the preliminary objection as to maintainability of cross objection raised on behalf of the petitioners, the respondents herein did not even file any say or reply due to which by order dated 09/09/2021, the Appellate Court directed that the said preliminary objection would be heard without say / reply of the respondents.

4. In these circumstances, this Court is of the opinion that the impugned order can be modified without any necessity of issuing notice to the respondents in the peculiar facts and circumstances of the present case.

5. In view of the above, the writ petition is disposed of by modifying the impugned order to the extent that the Appellate Court i.e. the Court of District Judge-5, Akola, is directed to first take up the preliminary objection as to maintainability of the cross objection raised by the petitioners in RCA No.39/2012, for consideration and not to postpone it till the final hearing of the cross objection.

6. The preliminary objection be taken up for consideration and it be disposed of within six weeks from today, in accordance with law.

JUDGE