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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10823 OF 2022

Laxmibai Kant Karbhari and Others

PETITIONERS

VERSUS

Shantappa Dharmappa Karbhari

RESPONDENT

.....

Mr. Parag Vijay Barde, Advocate for the petitioners

Mr. C. P. Patil, Advocate for the respondent

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 14th MARCH, 2023

ORDER :

1. The petitioners are aggrieved by order dated 10th August, 2022 passed by Civil Judge, Junior Division, Omerga below Exhibit-105 in Regular Civil Suit No. 320 of 2016, thereby allowing the application filed by the respondent – plaintiff, for re-examination of the witnesses, as the petitioners failed to file say.
2. Having heard learned advocate for the petitioners and the learned advocate for the respondent and on going through the grounds raised in the petition and the documents filed, so also the impugned order, it appears that the Trial Court has failed to give reasonable and fair opportunity to the petitioners to file say to the application Exhibit-105 filed by the respondent.
3. It appears that application Exhibit-105 seeking to re-

examine witness, i.e. plaintiff is filed on 3rd February, 2022. On the same day, the Trial Court passed order, "*other side to say*". It appears that next date kept was 23rd March, 2022. On that day, overleaf the application Exhibit-105, the petitioners have mentioned that the application is illegible and the respondent be directed to file typed copy of the same so that say can be filed. Ignoring said say, the Trial Court proceeded to allow the application, solely on the ground that say is not filed by the petitioners. In that view of the matter, the impugned order cannot be sustained.

4. In the result, writ petition is allowed. Impugned order dated 10th August, 2022 passed by Civil Judge, Junior Division, Omerga below Exhibit-105 in Regular Civil Suit No. 320 of 2016, is hereby quashed and set aside. The matter is remitted back to the Trial Court for fresh consideration of Exhibit-105 on its own merits, after obtaining say of the petitioners on the same, which shall be filed by the petitioners within two weeks from the date of receipt of writ of this order. Exhibit-105 shall be decided within four weeks after receipt of the say of the petitioners.

[NITIN B. SURYAWANSHI]
JUDGE