

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3022 OF 2020

NILAM
SANTOSH
KAMBLE

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Date: 2023.02.28
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Vitthal Krishnaji Raikar }
(Since deceased through legal heirs) }
 }
1.1 Rukmini Vitthal Raikar }
(Since deceased through Petitioner }
Nos.2 to 4 as her Legal }
Representatives) }
1.2 Balkrushna Vitthal Raikar }
1.3 Satish Vitthal Raikar }
1.4 Indrajit Vitthal Raikar }
 }
All R/at 197, Budhwr Peth, }
Pune-411 002 }

...Petitioners

Versus

Amarchand Kisanchand Agarwal }
R/at Marane Heights, 1111 Budhwar }
Peth, Pune-411 002. }

...Respondent

Mr.S.S. Kanetkar, for the Petitioners.

Mr.Vishal Kande a/w Ms.Janhavee Joshi i/b Sanjay S. Gawde, for
the Respondent.

CORAM : S.G. DIGE, J.

DATE : 21 FEBRUARY 2023

JUDGMENT :-

. Rule. Rule made returnable forthwith. By consent of
both the parties heard finally at the stage of admission.

2. It is contention of the learned counsel for the Petitioner that the Petitioner had filed Application for production of additional documents before the Appellate Court. The said Application at Exhibit-21 was allowed by the Court by order dated 9 December 2019. The Appellate Court granted permission to the Appellant to led additional evidence by filing the documents. The learned counsel further submit that on the same day the Tribunal has dismissed the Appeal filed by the Petitioner without giving opportunity to the Appellant as allowed by passing order below Exhibit-21.

3. The learned counsel further submits that the Appellate Court signed the judgment on 12 December 2019 and uploaded it on 12 December 2019. On the same day whereas the Appellate Court uploaded the order below Exhibit-21 on 16 December 2019. It shows that the Appellate Court had deliberately dismissed the Appeal filed by the Petitioner without giving an opportunity to the Appellant to argue on the documents. Hence, requested to set aside the impugned order passed by the Appellate Court.

4. The learned counsel for the Respondent submitted that the Appellate Court has permitted the Appellant to file the documents thereafter, the Appellate Court has dismissed the Appeal by passing the reasoned order, so there is no infirmity in

it. Passing the order and judgment on same date can't be seen as a perverse and illegal. Hence, the order passed by the Appellate Court is legal and valid and no interference is required in it.

5. I have heard both the counsel. Perused the order passed by the Appellate Court.

6. The Appellate Court has permitted the Petitioner to led additional evidence by filing documents, order is passed below Exhibit-21. It is significant to note that on same day the Appellate Court has dismissed the Appeal filed by the Petitioner, it shows unnecessary haste done by the Appellate Court while disposing the Appeal, after permitting the Appellant to led the evidence by filing additional documents, the Appellate Court should have given sufficient time to the Appellant to argue on the said documents. But without considering this fact the Appellate Court has dismissed the Appeal filed by the Appellant on the same day which is improper. Moreover, the Appellate Court has signed the judgment and order passed below Exhibit-21 on the same day but uploaded the judgment on 12 December 2019 and order below Exhibit-21 on 16 December 2019.

7. In view of the above, I pass following order.

ORDER

(i) The Writ Petition is allowed.

(ii) The impugned judgment and order dated 9 December 2019 passed by the Appellate Court in Civil Appeal No.1098 of 2016 is hereby quashed and set aside.

(iii) The Appellate Court is directed to hear both the parties on additional documents below Exhibit-21 filed by the Appellant and thereafter decide the matter on its own merit.

(iv) The Appellate Court is requested to dispose of the matter as early as possible.

(S.G. DIGE, J.)