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

WRIT PETITION NO.5361 OF 2014

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Anandibai Balaram Thavai & Ors. ... Petitioners

V/s.

Krishna Balaram Thavai & Ors. ... Respondent

Mr. Rajesh S. Datar for the petitioners.

Mr. Amit A. Karande for respondent Nos.1 to 5.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 11, 2023

PC.:

1. By the impugned order, the Courts below have rejected the plaint with a direction to present it after payment of requisite court fee stamp. The said order is confirmed by the Appellate Court.

2. On perusal of the orders passed by the Courts below, it appears that the decision of the Trial Court directing return of plaint under Order 7 Rule 10 of the Code of Civil Procedure, 1908 has been passed without giving opportunity of hearing to the petitioner before adjudication on the aspect of deficit court fee. It appears that the finding recorded by the Court about applicability of Section 6(4)(ha) is after conclusion of the Trial Court and based on inspection report carried out by the Superintendent of the Court that the plaintiff is required to pay deficit court fee. The Appellate Court has considered it on merits. However, the defect of

breach of principles of natural justice cannot be cured in Appellate Court. Hence, following order:

- a) The orders passed by the Courts below are quashed and set aside;
- b) The Trial Court shall grant opportunity of hearing to the plaintiff as regards deficit court fees, if any;
- c) If the Trial Court after granting opportunity to both sides comes to the conclusion that deficit court fees are required to be paid, an appropriate order shall be passed.

3. With this clarification, the writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)