

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION No. 6555 OF 2021**

VAISHALI
ANIL
TIKAM

Shankerabanu Afsar Patel

....Petitioner

Vs.

The State of Maharashtra and Ors.

....Respondents

Digitally signed
by VAISHALI
ANIL TIKAM
Date:
2023.03.10
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Mr. S.K. Kudle, Advocate for the Petitioner

Mr. N.K. Rajpurohit, AGP for Respondent Nos.1 to 5

Mr. P.r. Suryawanshi i/by Mr. G.M. Savagave for Respondent Nos. 6
and 7

Mr. Ketan Dhavle i/by Mr. Saurabh Oka, Advocate for Respondent
No.8

Mr. T.J. Pandian, Advocate for Respondent No.5

Mr. S.S. Aradhye, Advocate for Respondent No.6

**CORAM:- R.D. DHANUKA &
GAURI GODSE, JJ.**

DATE :- 6TH MARCH, 2023.

P. C.:

1. The Petitioner has impugned the order passed by this Court in Second Appeal No. 690 of 2014 in this Writ Petition, on the ground that fraud is committed by some of the Respondents in obtaining the order in Second Appeal No. 690/2014.

2. Learned counsel for the Respondent Nos. 6 and 7 raises an issue regarding maintainability of this Writ Petition. Our attention is invited to the order dated 12th April, 2022 passed by the Division Bench of this Court. By the said order, dated 12th April, 2022, this Court has already observed; if the Petitioner contends that the fraud has been played by the Respondents then the proper procedure is to be challenge the said order obtained by fraud before the appropriate forum and not in Writ Petition. Provisions of Order XXIII of the Code of Civil Procedure would come into play. This Court after making these observations, directed the learned counsel for the Petitioner to consider this aspect.

3. Mr. Kudale, learned counsel for the Petitioner states that since the fraud is committed in obtaining the order in Second Appeal, this Court can set aside the order passed in Second Appeal, in Writ Petition.

4. We are afraid, we cannot accept the submission made by the learned counsel for the Petitioner .

5. Writ Petition is accordingly dismissed as not maintainable. No order as to costs.

6. It is made clear that this Court has not gone into

the correctness of the order passed in Second Appeal for want of jurisdiction. If any appropriate proceedings are filed by the Petitioner, the same shall be decided on its own merits. All contentions of the parties are kept open.

(GAURI GODSE, J.)

(R.D.DHANUKA, J.)