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

WRIT PETITION NO.13797 OF 2022

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Date: 2023.09.04
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Malini Balaji Kamat Nee Malini Anant
Waravdekar Since Deceased Through
Legal Heir

Anuja Hemant Karnik W/o. Hemant
Karnik Nee Anuja Balaji Kamat

... Petitioner

V/s.

Rekha Gurudas Waravdekar
(Deleted Since Deceased) Through Lrs.
Shashant Anand Kamat

... Respondent

**WITH
INTERIM APPLICATION NO.1604 OF 2023
IN
WRIT PETITION NO.13797 OF 2022**

Sonali Johari

... Applicant

In the matter between

Malini Balaji Kamat Nee Malini Anant
Waravdekar

... Applicant

V/s.

Rekha Gurudas Waravdekar
(Deleted Since Deceased)
Through Lrs. Shashant Anand Kamat &
Ors.

... Respondents

Mr. Abhishek Bhat i/by S. K. Legal Associates LLP for
the applicant in interim application and for the
respondents in writ petition.

Mr. Rajesh B. Jain with Mr. Rohit Jain with Ms. Neha R.
Doshi i/by Legal Juris for the petitioner in writ
petition.

Mr. Parshva J. Shah for respondent Nos.8 and 9.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 4, 2023

P.C.:

1. Challenge in this petition is to the order dated 16th September 2022 refusing to substitute purchaser of the suit property in place of earlier purchaser. The petitioner is a decree holder in whose favour decree for partition has been passed by the trial Court.

2. During pendency of the present writ petition, the second purchaser intends to withdraw the offer and has requested this Court to refund his amount deposited with Commissioner for Taking Accounts. Since, the amount was deposited based on private treaty, the Interim Application No.1604 of 2023 needs to be allowed.

3. Accordingly, Interim Application No.1604 of 2023 is allowed in terms of prayer clause (b).

4. In so far as writ petition is concerned, it appears that the first purchaser deposited amount of Rs.5,00,000/- before Commissioner for Taking Accounts. He is no longer interested in purchasing the property. Therefore, it will be for the Trial Court to decide about the amount of Rs.5,00,000/- deposited by the first purchaser with the Commissioner for Taking Accounts.

5. However the petitioner being decree holder of a decree for partition, entitle to execute the decree as is permissible in law including applying for substitution of the new purchaser by private

treaty.

6. The Trial Court shall also adjudicate on the rights of the original plaintiffs who are respondent Nos.8 and 9 in the present writ petition, provided they participate in the proceeding.

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

(AMIT BORKAR, J.)