

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 16003 OF 2022**

Avinash Madhav Dhotre

.. Petitioner

Versus

Khushi Avinash Dhotare

.. Respondent

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- Mr. Samir A. Kumbhakoni for Petitioner.
 - None for Respondent
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CORAM : MILIND N. JADHAV, J.**DATE : JANUARY 03, 2023****P.C.:**

1. Heard Mr. Kumbhakoni, learned Advocate for Petitioner.
2. Perused the impugned order dated 24.03.2022 passed below Exh.6 in R.C.S. No.267 of 2019. Thereafter Petitioner filed review Application at Exh.52 which also came to be rejected vide order dated 10.08.2022.
3. Record indicates that Application filed under Section 11 of the Code of Civil Procedure was already pending on the file of the learned Trial Court. Application under Exh.6 was filed on 24.06.2019 and Application under Exh.15 under Section 11 was filed on 22.10.2019. It was incumbent upon the learned Trial Court to decide maintainability of the suit proceedings before deciding the Application under Exh.6. I find that there is clear jurisdictional error in deciding

the Application below Exh.6 during the pendency of the Application under Section 11.

4. In view of above both orders dated 24.03.2022 and 10.08.2022 stand quashed and set aside. Exh.6 stands revived to the file of the learned Trial Court.

5. Learned Trial Court is directed to decide the Application under Exhibit-15 filed under Section 11 of the Code of Civil Procedure,1908 within a period of two months from today.

6. With the above directions Writ Petition is disposed of.

[MILIND N. JADHAV, J.]

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