

HARSHADA H. SAWANT  
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.849 OF 2024

Mahadev Bapu Magdum

.. Petitioner

**Versus**

Sattappa Bapu Magdum and Ors.

.. Respondents

- Mr. Manoj Patil i./by S. S. Borulkar, Advocate for Petitioner.

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 24, 2024

P.C.:

1. Heard Mr. Patil, learned Advocate for Petitioner.
2. Though this Writ Petition challenges the impugned order passed in Application filed below Exhibit-21, at Exhibit-G, page No.57 of the Writ Petition, Mr. Patil has drawn my specific attention to the Application below Exhibit-17 and order of its disposal which is at Exhibit-D, page No.49 of the Writ Petition.
3. He would fairly submit that suit for partition was filed by Plaintiff being Regular Civil Suit No.39 of 2023 and all parties to the suit proceedings entered into a compromise before the Lok Adalat on 30.04.2023. The compromise *pursis* which was considered and taken on record is at Exhibit-B, page No.37 of the Writ Petition. He has drawn my attention to running page No.46 and internal page No.10 of the compromise *pursis* which is part of paragraph No.2 and would submit that original Defendant No.6 – Anandi Dinkar Patil despite

relinquishing her entire right, title and entitlement in the suit property and appending her signature on the compromise *pursis* which is at page No.47 has within a period of two and half months filed Application below Exhibit-17 contending that her signature has been obtained on the compromise *pursis* by keeping her in the dark and by falsehood.

**4.** In the Application filed below Exhibit-17 a further ground is raised that it was agreed between the parties that original Defendant No.6 shall be given her share in the suit property by the other parties. In reply to this Application, Petitioner filed his reply under Exhibit-21. This reply was taken on record by the learned Trial Court. This was in view of the fact that though compromise was agreed between the parties before the Lokadalat, the compromise decree was yet to be passed by the Trial Court.

**5.** The learned Trial Court considered the reply filed by the Petitioner and rejected the reply. The said order of rejection dated 30.09.2023 is impugned in the present Writ Petition. Adequate reasons appear to have been given in paragraph No.6 of the said impugned order for rejection. However, if the said reply is rejected by the learned Trial Court then as a *sequitur* to the said rejection the learned Trial Court ought to have granted the Application filed by the original Defendant No.6 under Exhibit-17. Incidentally it is seen that

Application below Exhibit-17 has been disposed of in view of rejection of the reply of the Plaintiff filed below Exhibit-21 without adjudication and giving any reasons.

**6.** An arguable case has been made out by Mr. Patil especially in view of the fact that Application filed below Exhibit-17 required appropriate adjudication by the learned Trial Court in view of the fact that Applicant therein had given her consent to the compromise decree and the reply filed thereto under Exhibit-21. Without effective adjudication merely rejecting the reply only filed by the Plaintiff / Petitioner before me under Exhibit-21 is not a proper course of action. Mr. Patil has vehemently contended that the compromise *pursis* was not only executed by all concerned parties but it was read, explained and recorded by the parties and only thereafter executed in the Lokadalat proceedings and therefore would submit that the Defendant No.6 now cannot resile from her stand and go behind the compromise *pursis*.

**7.** In this view of the matter, issue notice to the Respondents. Petitioner is directed to serve the Respondents. Humdast permitted. In addition to Court's notice, Petitioner is permitted to serve the Respondents with the copy of Writ Petition and this order and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof

thereof. Respondents are directed to remain present on the next adjourned date and file their Affidavit-in-Reply to the Petition on or before the next date, if so desired.

**8.** In the meanwhile, proceedings in Regular Civil Suit No.39 of 2023 before the learned Trial Court shall stand stayed until the present Writ Petition is disposed.

**9.** It is clarified that this Writ Petition shall be disposed on the next adjourned date at stage of admission itself by passing directions to the learned Trial Court.

**10.** Stand over to 14<sup>th</sup> February, 2024.

H. H. SAWANT

[ MILIND N. JADHAV, J. ]

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by HARSHADA  
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