

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3473 OF 2024

WITH

WRIT PETITION NO. 3621 OF 2024

Sanjay Gaurishankar Sharma & Anr.

.. Petitioners

Versus

Devang Dinesh Parmar & Ors.

.. Respondents

.....

- Mr. R.D. Soni a/w Ms. Uma Sharma i/by Mr. Sachin Chowdhari for Petitioners
- Mr. Devang Dinesh Parmar, Respondent No. 1 in person
- Mr. P.G. Sawant, AGP for Respondent No. 5
- Mr. P.G. Lad a/w Ms. Shreya Shah for Respondent No. 6 MHADA

.....

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 18, 2024

P. C.:

1. Heard learned Advocates appearing for the parties.
2. In the present case, it is *prima facie* seen that a declaratory challenged is maintained to the judgment & decree dated 26.09.2011 passed by the Bombay City Civil Court by the Plaintiff by filing the Suit in the year 2018 in the same Court. Plaintiff is appearing in person. He is an Advocate. He is unable to argue on maintainability of the Suit when asked and all that he would submit is that it is maintainable as the decree is obtained by fraud in 2011. Mr. Soni, learned Advocate for Petitioners and Mr. Parmar, contesting Respondent No. 1 i.e. Plaintiff are *ad idem* that the said decree dated 26.09.2011 has

been challenged by filing First Appeal bearing No. 37 of 2012 before this Court which has also been admitted. Application under O. VII, R. 11 of the CPC filed by Defendants in view of the aforementioned facts stands rejected due to which Defendants are before this Court in the present Writ Petitions.

3. Mr. Parmar the Plaintiff before the learned Trial Court has made his submissions in reply to the submissions made by Mr. Soni. Mr. Parmar would however submit that he be allowed to file his affidavit-in-reply to the present Writ Petitions which has not been filed. At his request, affidavit-in-reply is directed to be filed within a period of one week from today positively. Copy of the same shall be served on the other side on or before 24.04.2024.

4. I am informed that the learned Trial Court is seized with the hearing of the Suit proceedings and the next date is 24.04.2024. However considering the fact that the substantive challenge is maintained to the order of rejection of the Application under O. VII, R. 11 of the CPC which would go to the root of the Suit filed by the Plaintiff in the Trial Court, learned Trial Court is directed by this Court to defer hearing of the Suit proceedings to a future date until the present Writ Petition is determined by this Court.

5. Mr. Parmar would submit that he would also file written submissions of his arguments on the next adjourned date. He is permitted to do so.

6. Stand over to **25th April, 2024.**

Amberkar

[MILIND N. JADHAV, J.]

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signed by
RAVINDRA
MOHAN
AMBERKAR
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