

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6029 OF 2024

Ibrahim Fakir Qureshi & Ors.

.. Petitioners

Versus

Hujur Makbul Mulani & Ors.

.. Respondents

.....

- Mr. Prasad P. Kulkarni for Petitioners
- Ms. V.R. Raje for Respondent No. 11 - State

.....

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 24, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 24.04.2024. Heard Mr. Kulkarni, learned Advocate for Petitioners and Ms. Raje, learned AGP for Respondent No. 11 – State.
3. Present Petition takes exception to the order 04.04.2024 passed by the learned Trial Court rejecting Application of one of the Defendants who has been subsequently implemented in the Suit proceedings and seeks recall of Plaintiffs' witnesses for cross-examination.
4. Mr. Kulkarni has drawn my attention to the order dated 04.04.2024 and would contend that the reason attributable for rejection of the Application is that no convincing ground has been

stated by the Applicant / Defendant for seeking such a recall. It is an admitted position that the Applicant / Defendant was subsequently impleaded by Plaintiffs and the witness action of the Plaintiffs having been completed prior to his impleadment, it is the right of the said Defendant to cross-examine the witnesses of the Plaintiffs. Mr. Kulkarni would point out that the sale deed of the Applicant / Defendant is under challenge and in that view of the matter, it is all the more reason as to why Plaintiffs' witnesses are required to be cross-examined by the newly impleaded Defendant. The Defendant cannot be non-suited in such circumstances.

5. An arguable case is made out by Mr. Kulkarni for issuance of notice and stay of any further proceedings in the Suit till the present Writ Petition is determined on the next adjourned date. Hence, the proceedings in Money Lending Suit No. 63 of 2015 are hereby stayed.

6. Issue notice to the Respondents made returnable on 18.06.2024. Ms. Raje, learned AGP waives service on behalf of Respondent No. 11 – State. Humdast permitted. In addition to Court's notice, Petitioners are directed to serve copy of the Petition along with copy of this order on the Respondents 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 on or before the next date. After receiving the notice, Respondents to file affidavit-in-reply

within two weeks from today, if so desired with an advance copy to the Advocate for Petitioners. Rejoinder if any shall be filed within two weeks thereafter.

7. Respondents are directed to remain present either themselves or through their Advocate on the next adjourned date. It is made clear that if Respondents remain absent despite service on the next adjourned date, this Writ Petition shall be heard and disposed of at the stage of admission in the absence of the Respondents.

8. Stand over to **18th June, 2024.**

Amberkar

[MILIND N. JADHAV, J.]

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Digitally signed
by RAVINDRA
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Date:
2024.04.24
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