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

WRIT PETITION NO. 6872 OF 2024

Suresh Vasantrya Gaikwad

.. Petitioner

Versus

M/s. Karva Developers,

Through Shri. Devkisan Brijlaal Karwa and Ors. .. Respondents

-
- Mr. Mandar Limaye, Advocate for Petitioner.

.....
CORAM : MILIND N. JADHAV, J.

DATE : JUNE 11, 2024.

P.C.:

- 1.** Heard Mr. Limaye, learned Advocate for Petitioner.
- 2.** The impugned order rejects the Application of the Writ Petitioner for getting impleaded in the Suit proceedings which were determined by the learned Trial Court and in the First Appeal which is pending before the District Court.
- 3.** By virtue of the decree dated 04.07.2008 appended at Exhibit "C" page No.44 of the Writ Petition, Defendants are directed to execute the sale deed of the Suit land in favour of the Plaintiffs on payment of balance sale consideration of Rs.30,63,805/-.
- 4.** Mr. Limaye would inform the Court that the decree dated 04.07.2008 is challenged in First Appeal No.2035 of 2008 in this Court and by order dated 21.03.2009 this Court directed stay of execution of the impugned decree as also deposit of the amounts which were

directed by the said decree.

5. Mr. Limaye would then inform the Court that this Appeal was transferred to the District Court due to change in pecuniary jurisdiction and was renumbered as Regular Civil Appeal No.448 of 2016. He would submit that on 04.11.2015, Defendants transferred and assigned their entire right in the Suit land in favour of the Writ Petitioner / third party on the basis of an earlier PoA dated 17.09.2004.

6. In that view of the matter, Writ Petitioner / third party preferred an Application before the District Court seeking impleadment as a Co-appellant alongwith Appellants in the First Appeal. That Application was filed on 08.02.2023 and determined by the impugned order dated 11.01.2024. The impugned order is at page No.150 of the Writ Petition.

7. After going through the impugned order and considering the aforesaid fact, an arguable case has been made out by Mr. Limaye for issuance of notice and to hear the Respondents at their objections.

8. Though, I am *prima facie* not in complete consonance with the reasons returned by the learned Trial Court in paragraph No.11 of the impugned order, I would still desire to hear the Respondents on their objections.

9. Issue notice to the Respondents. Humdast permitted.

10. In addition to Court notice, Petitioner is permitted to serve a copy of the Petition and this order on the Respondent 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.

11. Respondents are directed to remain present in Court on the next adjourned date either by themselves or through Advocates.

12. Respondents are directed to file their Affidavit-in-Reply on or before the next date, if so desired.

13. It is clarified that, this Writ Petition shall be disposed of on the next adjourned date at the stage of admission itself by giving appropriate directions with respect to the First Appeal which is pending before the District Court.

14. If the Respondents do not remain present on the next adjourned date even after receiving service of today's order, this Court shall take adverse inference and pass appropriate directions strictly in accordance with law.

15. Mr. Limaye would inform the Court that the First Appeal before the District Court is fixed on 18.06.2024. In view of this order, the learned District Court is directed by this Court to defer the hearing of the First Appeal until the present Writ Petition is determined.

16. Stand over to 25th June, 2024.

[MILIND N. JADHAV, J.]

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Digitally signed
by AJAY
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Date: 2024.06.12
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