

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

WRIT PETITION NO.13112 OF 2024

Neha Vinayak Nagwekar

....Petitioner

V/S

Harendra Damji Bhalla

....Respondent

Mr. Prashant Nayak *for the Petitioner.*

Mr. Pradeep Thorat *i/b Ms. Aditi Naikane for Respondent.*

CORAM: SANDEEP V. MARNE, J.

DATE : 07 OCTOBER 2024.

P.C.:

1. Heard the learned counsel appearing for the parties.

2. By impugned order dated 29 September 2023 the application filed by the Petitioner for appointment of Court Receiver under Order 40 of the Code of Civil Procedure, 1908 (**the Code**) has been rejected. It appears that the said application was rejected on earlier occasion by order dated 26 May 2023. The Petitioner believed that the said order rejecting appointment of Court Receiver passed under provisions of Rules 1 and 4 of Order 40 of the Code is appealable under provisions of Order 43, Rule 1(s) of the Code and accordingly filed Miscellaneous Appeal No.49 of 2023 before the

Appellate Court. The Appellate Bench set aside the order dated 26 May 2023 and remanded the application at Exhibit-57 for being decided afresh. Accordingly, the Small Causes Court decided the application at Exhibit-57 afresh and has once again rejected the same by order dated 29 September 2023. Thus the order dated 29 September 2023 can be appealed before the Appellate Bench under provisions of Order 43 Rule 1(s) of the Code. Instead of doing so Petitioner has filed this Petition belatedly after passage of period of almost one year from the date of passing of the order dated 29 September 2023.

3. Mr. Nayak, the learned counsel appearing for Petitioner would submit that Petitioner is also aggrieved by the observations made by the Appellant Bench in the order dated 11 August 2023 while remanding the application at Exhibit-57 afresh. Apart from the fact that there is no specific prayer in the present Petition challenging any observation in order dated 11 August 2023, the Petitioner took a calculated chance of re-arguing the application at Exhibit-57 after securing order from the Appellate Bench on 11 August 2023. He cannot now turn around and say that the order dated 11 August 2023 passed by the Appellate Bench is erroneous. Be that as it may. Since the subsequent order dated 29 September 2023 rejecting the application at Exhibit 57 is appealable before the Appellate Bench, this Court is not inclined to entertain the present

Petition. The Writ Petition is accordingly **rejected**. The Petitioner would be however at liberty to file Appeal before the Appellate Bench challenging the order dated 29 September 2023.

4. The time spent in prosecuting the present Petition shall be excluded while computing the period of limitation in filing such Appeal.

(SANDEEP V. MARNE, J.)

Digitally signed
by
SUDARSHAN
RAJALINGAM
KATKAM
Date:
2024.10.09
11:27:50 +0530