

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13230 OF 2024

Bindia Jayendra Garasia and Ors.

.. Petitioners

Versus

M/s. Saket Co-Op. Hsg. Ltd. and Ors.

.. Respondents

.....

- Mr. Nilesh R. Mehta, Constituted Attorney of Petitioners.

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CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 03, 2024

P.C.:

- 1.** Mentioned. Not on Board. Taken on Board.
- 2.** Heard Mr. Mehta, Constituted Attorney for Petitioners.
- 3.** Perused the praecipe dated 03.10.2024 and the Writ Petition.
- 4.** This Writ Petition No.13230 of 2024 is mentioned urgently at the time of rising during lunch recess by the Constituted Attorney of Writ Petitioners. He would submit that there is a grave urgency as there is violation of fundamental rights of Scheduled Tribes involved in the present case. He would also submit that he has been running from pillar-to-post for the past three weeks to get this Writ Petition heard and it is only today that he was informed by the Division Bench of this Court (Coram : A.S. Chandurkar and Rajesh Patil, JJ.) that the Writ Petition will lie before this Court. At his request considering that the

Constituted Attorney is not an Advocate by profession, I have considered his praecipe. I also requested him to give me a copy of Writ Petition so that I can understand his problem. He has given me a copy of his Writ Petition. What I find in the Writ Petition is that a challenge is maintained to a final judgement and decree passed by the Trial Court i.e. City Civil Court at Dindoshi, Borivali Division in S.C.Suit No.1415 of 2009. The judgement is dated 13.08.2024. Suit was filed for declaration and mandatory injunction. The judgement is appended at Exhibit-1, page No.32 of the Writ Petition. On perusal of the said judgement, it is seen that S.C.Suit No.1415 of 2009 is partly decreed and certain directions are passed against the Defendants to be complied with within four months. Naturally, the Defendants are anxious and desire that the challenge to the said decree is heard by the Court.

5. The Constituted Attorney of Writ Petitioner appearing before me is completely bereft of the Court procedures and he is not in a position to assist the Court at all. He also informed me that today he mentioned the present matter which was at serial No.71 before the Division Bench (Coram B.P Colabawalla & F.P. Pooniwalla, JJ.). He however did not inform me that the Court had passed the order directing the Registry to verify and place the matter before appropriate Court. Hence the Constituted Attorney is unfit for appearing before the Court as he has suppressed this order passed today from me and

does not have the time to wait for the Registry to verify his Petition. However due to his persistent request, I have considered his praecipe which he has filed. What I find is that against the Judgement and decree passed by the Trial Court, he has filed a Writ Petition which is clearly not maintainable. When such a Writ Petition is lodged by the Registry, it is the duty of the Registry to verify the reliefs prayed for and the impugned order / judgement / decree. In so far the roster of this Court is concerned, it pertains to all orders passed by Civil Court under the Code of Civil Procedure, 1908 (for short 'CPC'). The impugned judgement / decree is not an interlocutory order by the Civil Court, rather it is a final judgement / decree in a declaratory Suit.

6. In that view of the matter, the Registry is directed to peruse Exhibit-1 and place the present Writ Petition before the appropriate Court as per assignment and roster assigned by the Hon'ble the Chief Justice or advise the Petitioner the right course of action.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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