

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5964 OF 2024

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M/s. Amar Builders
A Proprietary Firm through its Proprietor
Amar H. Manjrekar

...Petitioner

Versus

Champalal Indraraj Sand alias Rahtekar & Ors. ...Respondents

Mr. Nachiket V. Khaladkar, Advocate, for the Petitioner.
Mr. S. S. Kanetkar, Advocate, for the Respondent No.1 to 5.

CORAM: MADHAV J. JAMDAR, J.
DATED : 27th JANUARY 2025

P. C.:

1. Heard Mr. Khaladkar, learned Counsel appearing for the Petitioner and Mr. Kanetkar, learned Counsel appearing for the Respondent Nos.1 to 5.

2. By the present Writ Petition filed under Article 227 of the Constitution of India, the challenge is to the order passed below Exhibit 56 in Civil Appeal No.9 of 2009. The impugned order reads as under:

“In view of order passed below exh.54, this application (exh.56) rejected.”

3. The said Exhibit-56 Application has been filed *inter alia* praying that all the occupants be impleaded as party to the said Appeal. The Application bearing Exhibit-54 was filed for delay condonation in filing cross-objection. Thus, merits of the said Exhibit-54 Application and Exhibit-56 Application are totally different.

4. Mr. Khaladkar, learned Counsel appearing for the Petitioner is right in contending that said Exhibit-56 Application has been rejected without considering the merits of the said Application.

5. Accordingly, the order dated 4th August 2018 passed by the learned District Judge-5, Pune below Exhibit-56 in Civil Appeal No.9 of 2009 is quashed and set aside and the said Exhibit-56 Application in said Civil Appeal No.9 of 2009 pending before the learned Appellate Court is restored to the file of the learned Appellate Court.

6. It is clarified that this Court has not considered the merits of Exhibit-56 Application and all contentions on merits are expressly kept open.

7. The Writ Petition is disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]