

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

**WRIT PETITION NO.9996 OF 2019**

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Shri. Naresh Atmaram Tejawani and Anr. ..Petitioners

Versus

Shri. Ravindra Abhimanyu Keni ..Respondent

Ms. Gauri Godse, for the Petitioners.

Mr. Vijay V. Nene, for the Respondent.

**CORAM : NITIN W. SAMBRE, J.**

**DATE : 28<sup>th</sup> FEBRUARY, 2022**

**PC.**

1. Petitioners hold a decree for possession, are facing proceedings for setting aside said ex-parte decree in MA No.458 of 2015. Pursis Exh.40 is taken out by the petitioners/decreed holders closing their evidence on 23<sup>rd</sup> February, 2018.

2. Having realized said mistake, petitioners took out proceedings at Exh.41 invoking inherent powers of the Civil Court seeking permission to lead evidence, which is rejected vide impugned order dated 8<sup>th</sup> July, 2019 by 3<sup>rd</sup> Joint Civil Judge Senior Division, Kalyan. As such, this petition.

3. I have heard respective counsels.

4. Counsel for the petitioners/decreed holders in Special

Civil Suit No.159 of 2013 on instructions makes a categorical statement that the decree in question shall not be executed till the conclusion of MA No.458 of 2015.

5. Since the statement is made on instructions, same is accepted as an undertaking to this Court.

6. As the ex-parte decree is sought to be set aside in MA No.458 of 2015, in which the petitioners inadvertently closed their evidence, they are permitted to enter into the witness box on the next date of hearing of the MA proceedings by setting aside impugned order. The petitioners shall conclude their evidence on the very same day and shall not prolong the proceedings of recording of evidence. Subject to payment of cost of Rs.5,000/- to be deposited in MA proceedings before the petitioners enter into the witness box, petitioners are permitted to lead evidence.

7. The Court taking the MA proceedings shall pass appropriate order of apportionment of cost.

8. As such, order dated 8<sup>th</sup> July, 2019 is hereby set aside and application Exh.41 stands allowed in above terms.

9. The petition stands allowed in above terms.

10. Parties hereto agree that they shall cooperate in

disposal of MA proceedings within a period of six months from today.

11. As such, Court below is directed to decide the MA proceedings, in any case, within a period of six months from the date of first appearance of parties.

**[NITIN W. SAMBRE, J.]**