

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 768 OF 2014

Sahebrao s/o Vithalrao Jamdhade
Age 46 years, occup. Labour,
R/o Nahad, Tq. Basmath,
Dist. Hingoli Petitioner

versus

1. Laxmibai s/o Vithalrao Jamdhade,
died, through legal representatives:-

1A Datta s/o Vithalrao Jadhade
Age 55 years: Occup. Agril.
R/o Nahad

1AA Geetabai w/o Shivaji Kapure,
Age: 60 years, occup. Home maker,
R/o Pangara Dhone, Tq. Purna,
Dist. Parbhani

3. Jijabai w/o Datta Jamdhade,
Age 47 years, Occup. Agril.

4. Dhammpal w/o Natha Jamdhade
Age 24 years, occup. Agril.

5. Ananda w/o Natha Jamdhade,
Age 24 years, occup. Agril.

All R/o Nahad, Tq. Basmath,
District Hingoli Respondents

Mr. Anilkumar B. Dhongade, Advocate for petitioner
Mr. M.P. Kale, Advocate for respondents no. 1 and 2
Mr. A.C. Bhagure, Advocate for respondents no.1-AA 3 to 5
Respondents No.1-A and 2 served.

CORAM : SUNIL P. DESHMUKH, J.
DATE : 7TH JULY, 2015

ORAL JUDG MENT:

1. Rule. Rule made returnable forthwith. Heard the parties finally, by consent.
2. Petitioner-original plaintiff is before this court, against an order on civil miscellaneous application no. 41 of 2011, passed by Joint Civil Judge, Junior Division, Basmathnagar on 17-12-2013.
3. Civil miscellaneous application no. 41 of 2011 had been moved for restoration of regular civil suit no. 97 of 2009 which had been dismissed in default. Plaint in said suit appears to have been presented on 17-06-2009 and the order dismissing the suit in default came to be passed on 26-08-2010 for want of evidence by the plaintiff-present petitioner. It appears that the issues had been framed and thereafter about seven dates for evidence had intervened. The matter was being adjourned on the ground that the petitioner had been out of village for earning livelihood.
4. Perusal of the plaint shows, the petitioner has been shown to be a labourer. Other side also does not seriously dispute about

veracity of contention on behalf of the petitioner that for livelihood, petitioner-plaintiff had to remain out of village, albeit, Mr. Kale, learned counsel appearing for respondents no.1 and 2 harps upon that in the impugned order it has been observed by the trial court that it was quite possible for petitioner to attend the proceedings since he was in contact with his lawyer.

5. Though Mr. Kale vehemently opposes request under the writ petition, having regard to that it is not seriously disputed that the petitioner had remained outside the village for livelihood and quick succession by which dates occurred for evidence, pedantic approach under the circumstances needs to be eschewed. It is also to be borne in mind that the petitioner is not going to gain anything by prolonging the *lis* instituted by him nor any interim orders were secured by him. In such a case, credence may be given to contentions of petitioner without hairsplitting exercise and the matter deserves to be looked at with leniency.

6. In the present case, if any inconvenience is caused to defendants, the same can be made good by awarding certain costs. Looking at that there is no dispute about that the petitioner is a labourer and further that the matter for restoration had been pending before trial court for quite a long

time and thereafter in this court and having regard to the number of defendants involved, I deem it appropriate that costs of Rs.5,000/- to be paid to defendants would meet the ends of justice.

7. In view of aforesaid, writ petition stands allowed in terms of prayer clause (B) and disposed of. The suit bearing regular civil suit no.97 of 2009 stands restored to its position as had been subsisting before 26-08-2010. Costs referred to above be deposited in the trial court within a period of four weeks from the date of receipt of writ of this order. The suit be proceeded with accordingly.

9. Rule made absolute in aforesaid terms.

SUNIL P. DESHMUKH, J.

pnd