

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10258 OF 2014

1. Shamabai w/o Dayanand Hurdale
Age : 49 Yrs., Occ. Household,
R/o : Sut Mill Road, Latur.
2. Sharyu d/o Dayanand Hurdale
Age : 24 Yrs., Occ. Education,
R/o : Sut Mill Road, Latur.
3. Vedika d/o Dayanand Hurdale
Minor, through her legal
guardian/next friend, **PETITIONERS/**
petitioner No. 1. **[ORI.DEFENDANTS]**

V E R S U S

Bhausahab s/o Prabhu Bawage
Age : 35 years, Occ. Business, **RESPONDENT/**
R/o : Mitra Nagar, Latur. **[ORI.PLAINTIFF]**

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Mr. A.P.Bhandari, Advocate for Petitioners.
Mr. P.V.Mandlik, Senior Counsel i/b
Mr. A.S.Gandhi, Advocate for Respondent

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CORAM : SUNIL P. DESHMUKH, J.

DATE OF JUDGMENT : 31st AUGUST, 2015

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel for the parties.

2. Petitioners/original defendants purport to be aggrieved by the order on Exh. 25 in Spl.Civil Suit No. 68/2012 passed by the Civil Judge [Sr.Division], Latur on 13/03/2014, rejecting their request for rejection of the plaint.

3. Present petitioner No. 1 is wife of deceased Dayanand and petitioners No. 2 and 3 are his daughters. The petitioners are defendants in Spl.Civil Suit No. 68/2012 filed by the respondent claiming recovery of ₹ 42,00,000/- [Rupees Forty Two Lacs]. While the matter had reached the stage of evidence, application [Exh.25] came to be moved purportedly pursuant to Order VII, Rule 11 (d) of the Code of Civil Procedure claiming that suit stands barred having regard to amended provisions of Section 6, particularly sub section (4) thereof as there can not be any pious obligation since the same stands abolished under said provision.

4. Mr. Bhandari, learned counsel for the petitioners submits that due to said amendment, distinction between son

and daughter is removed and reference to a daughter constitutes a reference as a son for the intended purpose pursuant to amended provisions. He, therefore, submits that since there can be no pious obligation, no suit can be maintained for recovery of amount as pious obligation of the plaintiffs. He further contends that though the Suit also refers to an agreement, the impugned order has invested more time and labour on the amendment to Hindu Succession Act rather than the agreement. He apprehends that the observations made in respect of amended provisions of Hindu Succession Act may foreclose the doors on the defendants to take up the contentions with regard to the same at the stage of final hearing of the suit after evidence is over. He contends that looking to the tenor of the matter, it does appear that sufficient case has been made out for consideration of application under Order VII, Rule 11 (d) of the Code of Civil Procedure for rejection of the plaint being barred under the amended provisions of Hindu Succession Act.

5. Learned Senior Counsel Mr. P.V.Mandlik appearing for the respondent, however, contends that the basis of the claim is the agreement amongst the parties and that the daughters being sons, would be obliged to see that the amount taken by their father is returned to the plaintiff. He submits that along with

inheritance, certain obligations are also incurred and as such daughters would be responsible. He further points out that the agreement has been executed by the deceased husband of defendant No. 1 on her behalf and on behalf of defendants No. 2 and 3 [the petitioners] and as such, defendants No. 2 and 3 are directly liable to the consequences apart from or in addition to as daughters and would be subject to the civil suit.

6. Having regard to the aforesaid submissions, it can not be straight-away said that the suit would be barred under Order VII, Rule 11 (d) of the Code of Civil Procedure.

7. Under the circumstances, I am not inclined to interfere with impugned order in the writ jurisdiction. However, apprehension by Mr. Bhandari, learned counsel also would require some consideration. I, therefore, deem it appropriate that it be left open for the parties to raise all the contentions, in respect of amendments to Hindu Succession Act, including the ones referred to above. As such, it would be open for the parties to raise contentions with respect to the same and the trial court shall not get swayed away or influenced by the observations which are appearing in the impugned order. It shall consider all these aspects afresh.

8. Writ Petition stands disposed of. In view of the above, Rule stands discharged.

[SUNIL P. DESHMUKH, J.]

KNP/W.P. 10258.2014 - [J]