

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

WRIT PETITION NO. 3055 OF 2016

Ratilal Shankar Shimpi

... Petitioner

VERSUS

Ashok Shankar Shimpi & Ors.

... Respondents

.....
Mr P. S. Paranjape, Advocate for the petitioner
Mr Mahesh Patil, Advocate for respondents
.....

CORAM : **SUNIL P. DESHMUKH, J.**
DATE : **5TH JULY, 2016.**

PER COURT:

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. Aggrieved by order dated 22.01.2016 passed by the learned Joint Civil Judge Senior Division, Dhule, rejecting application Exhibit-65 filed by present petitioner, who is defendant No.1, for dismissal of Special Civil Suit No. 184 of 2007 instituted by present respondents No. 1 to 8 for partition and separate possession, the petitioner is before this Court.

3. Learned counsel for the petitioner purports to persuade this Court to give indulgence to his request to accord treatment to application at Exhibit-65, to be pursuant to order XXXII A of Civil Procedure Code where-under the Court can make efforts for settlement of dispute particularly with reference to rules 3, 4 and 5 thereof. He submits that, a stickler's compliance may not be required in the proceedings of such nature. From the nature of reliefs claimed, it is obvious that the dispute is among the family members.

4. On the other hand, Mr. Mahesh Patil, learned counsel for the respondents, opposes the request, stating that in the application Exhibit-65, there is even not a whisper in respect of invocation of order XXXII A of Civil Procedure Code. As a matter of fact, the application has been clearly moved seeking dismissal of the suit, for, it having been filed through a general power of attorney holder and not by the plaintiffs personally and the trial court has viewed the matter accordingly and dismissed the application giving sound reasons as are appearing in paragraph no. 5 of impugned order. He submits that, as such, no indulgence be given to the request being made in the writ petition for that cannot be the subject matter of the writ petition.

5. The application does not appear to have been moved with reference to the provisions of the Code as have been submitted before this Court. In the circumstances, the reasons which are appearing in paragraph no. 5 of impugned order may not be said to be strayed ones from the basic purpose as is seen from prayer in the application seeking dismissal of the suit. The court has considered that, since it is difficult for plaintiffs no. 1 to 8 to attend suit proceedings, the suit is being prosecuted through a power of attorney holder and that such a prosecution by power of attorney holder is not prohibited. The court has also taken note of that, the suit has been instituted through a power of attorney holder is not a reason tenable at all for dismissal of suit. The court has accordingly rejected the application. Thus, there appears to be little scope to cause interference in impugned order passed in the background on which the application has been moved.

6. The Writ Petition, as such, is not being entertained and is dismissed. Rule is discharged.

[SUNIL P. DESHMUKH]
JUDGE