

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6391 OF 2013

1. Yashodabai Genu Salve,
Age-78 years, Occu-Household,
R/o Usthal Dumala, Taluka Newasa,
Dist.Ahmednagar,
Through her Power of Attorney Holder,
Ganpat Genu Salve,
Age-47 years, Occu-Agriculturist,
R/o Usthal Dumala, Taluka Newasa,
Dist.Ahmednagar,
2. Ganpat Genu Salve,
Age-47 years, Occu-Agriculturist,
R/o Usthal Dumala, Taluka Newasa,
Dist.Ahmednagar,
3. Raosaheb Genu Salve,
Age-45 years, Occu-Agriculturist,
R/o Usthal Dumala, Taluka Newasa,
Dist.Ahmednagar

..PETITIONERS

-Versus-

1. Shripati Tukaram Salve,
Age-63 years, Occu-Agriculturist,
R/o Telgudgaon, Taluka Newasa,
Dist.Ahmednagar,
2. Bhika Tukaram Kale,
Age-66 years, Occu-Agriculturist,
R/o Telgudgaon, Taluka Newasa,
Dist.Ahmednagar,
3. Gorakh Shripati Salve,
Age-63 years, Occu-Agriculturist,
R/o Telgudgaon, Taluka Newasa,
Dist.Ahmednagar

..RESPONDENTS

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Shri.A.PBhandari, learned Advocate for the petitioners.
Shri.N.B.Narwade, learned Advocate for the respondents.
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CORAM : RAVINDRA V. GHUGE, J.

Date of Judgment : 29/01/2016

Oral Judgment :

1 Pursuant to the order passed today on Civil Application No.14340/2013, by the consent of the parties, the Writ Petition itself is taken up for final hearing.

2 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

3 Shri Bhandari, learned Advocate for the Petitioners, submits that the Petitioners who are the original Decree Holders in Regular Darkhast No.36/1997, had moved the applications Exhibits 16 and 20 way back in the year 2004 on which the Say from the Judgment Debtors was called for in March, 2005. The applications were pending. "No Say" order was passed and the applications were to be heard and decided. Due to inadvertence, the Decree Holders did not appear in the matter on the date posted for arguments and consequentially, on 26.11.2012 by the impugned order, the said applications were disposed of.

4 He further submits that neither have the Petitioners neglected the matter, nor have they lost interest in the matter. It is purely out of inconvenience and inadvertence that the said applications could not be argued on a particular given date. The Petitioners have been litigating for a long time and the entire litigation would be rendered futile if the execution proceedings are disposed of on account of non prosecution.

5 Shri Narwade, learned Advocate for the Respondents, has strenuously supported the impugned order. His contention is that the Executing Court cannot be expected to wait for the Decree Holders to address the Court as and when they may so desire. Since the Executing Court realized that the matter was getting unduly delayed, it granted a last chance to the Decree Holders on 02.11.2012. Since steps were not taken, the applications were disposed of. He, therefore, prays for the dismissal of the petition.

6 In the alternative, Shri Narwade submits that if this Court is inclined to allow this petition and set aside the impugned order, heavy costs may be imposed on the Petitioners.

7 I have considered the submissions of the learned Advocates for the respective sides.

8 The impugned order dated 26.11.2012 is passed in Regular Darkhast No.36/1997. Regular Civil Suit No.49/1990 was instituted by the Petitioners against the Respondents way back in 1990. The litigating sides by now have spent about 25 years in this litigation. On account of the failure of the Petitioners in taking steps in relation to the applications Exhibits 16 and 20, the Regular Darkhast has been disposed of. It is apparent that by the impugned order the Petitioners are not likely to get the fruits of litigation despite having succeeded in the civil suit and the decree issued in their favour.

9 In the light of the above, this Writ Petition is allowed. The impugned order dated 26.11.2012 is quashed and set aside. Regular Darkhast No.36/1997 is restored to the file of the Executing Court i.e. learned 2nd Joint Civil Judge, Junior Division, Newasa. The litigating sides shall appear before the Executing Court on 12.02.2016. Formal notices need not be issued since all the parties are before this Court.

10 The Petitioners shall ensure that they would demonstrate due diligence in the pending executing proceedings and all the litigating sides shall refrain from seeking adjournments on unreasonable and trivial grounds. The applications Exhibits 16 and 20 shall be decided by the Executing Court on their own merits and without being influenced by this

judgment.

11 In the light of above, costs of Rs.10,000/- (Rupees Ten Thousand only) shall be deposited by the Petitioners before the Executing Court within a period of FOUR WEEKS from today. After the said costs are deposited, the five Respondents shall withdraw the said costs in equal proportion.

12 Rule is made absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)