

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

WRIT PETITION NO.2596 OF 2015

Baburao s/o Mainaji Phutke
Age 61 years, Occu. Business,
R/o Gangakhed, Tq. Gangakhed,
District Parbhani

... PETITIONER

VERSUS

1. Shankarlal s/o Ratanlal Jaiswal,
Died, through his L.Rs.

1-1. Mathurabai w/o Shankarlal Jaiswal,
Age 56 years, Occu. Household,
R/o Gangakhed, Tq. Gangakhed,
District Parbhani

1-2. Rajesh s/o Shankarlal Jaiswal,
Age 33 years, Occu. Business,
R/o as above.

1-3. Nilesh s/o Shankarlal Jaiswal,
Age 33 years, Occu. Business,
R/o as above.

1-4. Sapna Brijkishor Jaiswal,
Age 33 years, Occu. Business,
R/o as above.

1-5. Archana Anandkumar Jaiswal,
Age 33 years, Occu. Business,
R/o as above.

1-6. Shantabai w/o Baburao Sakhare,
Age 46 years, Occu. Household,
R/o Pingli, Taluka and
District Parbhani

... RESPONDENTS

.....
Shri R.T. Nagargoje, Advocate for petitioner
Shri K.J. Suryawanshi, Advocate for respondent No.1-2.
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CORAM: S. B. SHUKRE, J.

DATED: 27th February, 2017.

ORAL JUDGMENT :

1. Head learned counsel for the petitioner, and learned counsel for respondent No.1-2, the contesting party. Rule. Rule made returnable forthwith and heard finally by consent of learned counsel for the contesting parties.

2. It is seen from the impugned order dated 29/1/2015 that, as it is well reasoned order, exhaustively dealing with all the contentions of the petitioner on facts as well as law. The impugned order, in particular, notes a fact borne out from the record of the case that, on the one hand, the petitioner gave an excuse for his absence before the appellate Court owing to his illness relating to his pulmonary disease and on the other hand, same petitioner regularly attended the Court in the execution proceedings from 2008 to 2013, the relevant period. The delay occurred in this case is of 4 years 10 months and 5 days. During this period of time, the petitioner was attending the execution proceedings and also ignoring the proceedings before the first appellate Court. Thus, this is a case of false cause being shown by the petitioner and, therefore, the learned District Judge has rightly held that the discretion in favour of the petitioner under

Section 5 of the Limitation Act could not be exercised, there being no sufficient cause.

3. No doubt, it is always better that the suits are decided on merit rather than on technical points or on the point of limitation. But, it is equally well settled that, only because there is need for deciding the disputes on merit, Courts should not unsettle the rights which are vested in the parties by virtue of the indolence of the other side. If sufficient cause is shown for not exercising the legal right within stipulated period of time, then only law would come to the aid of such a party. The findings of fact recorded by the learned District Judge are not perverse and appear to be logically arising from the record of the case. There is no scope for making any interference in the impugned order.

4. There is, thus, no merit in the petition and it deserves to be dismissed. The petition stands dismissed with costs. Rule is discharged.

(S. B. SHUKRE)
JUDGE

fmp/