

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

**WRIT PETITION NO. 6883 OF 2015**

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SUNANDA VENKATESH BOGA, L.RS. VENKATESH  
CHANDRAYYA BOGA AND OTHERS  
VERSUS  
DATTATRAYA GANGARAM BHIMNATH AND ANOTHER

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Advocate for Petitioners : Mr Bedre Vinayak Sudhakar  
Advocate for Respondent 1 : Mr Karpe Rahul R.

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**CORAM : V.K. JADHAV, J.**  
**Dated: November 27, 2017**

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**PER COURT :-**

1. Being aggrieved by the order passed by the Member, Maharashtra Co-operative Appellate Court, Bench at Aurangabad, dated 16.4.2015 in Revision No.41/2013, the legal representatives of original opponent No.2 has approached this Court by filing present writ petition.

2. Respondent No.1 herein has raised a dispute in respect of the house property bearing CTS No.24/1A situated at Shramik Nagar, Savedi, Ahmednagar, before the Cooperative Court, Aurangabad for declaration and

injunction in respect of the house property bearing CTS No.24/1A situated at Shramik Nagar, Savedi, Ahmednagar. During the pendency of the said dispute, the original opponent no.2 Sunanda died on 17.5.2012. However, the disputant has not taken any steps for bringing the legal representatives of deceased Sunanda on record. Respondent no.1/original disputant has filed applications at exh.56, 58 and 60 respectively for setting aside the order of abatement and for bringing the legal representatives of deceased on record. The Co-operative Court, Ahmednagar has rejected said applications filed at exh.56, 58 and 60 by order dated 6.9.2013. Respondent No.1/original disputant has preferred Revision Petition before the Co-operative Appellate Court, Bench at Aurangabad on various grounds. The learned Member of the Maharashtra State Co-operative Appellate Court Mumbai, Bench at Aurangabad by impugned order dated 16.4.2015 disposed of the said revision petition and further set aside the orders passed by the Co-operative Court below Exh.56, 58 and 60 on payment of costs and further directed the Cooperative

Trial Court to accept said applications and decide the said applications afresh one by one by giving reasonable opportunities to the parties. Further, the appellate Court has also directed the disputant to file delay condonation application for setting aside the abatement caused in bringing the legal representatives of deceased opponent no.2 on record. The learned Member of the Appellate Court has granted liberty to the disputant to file an application to set aside the order dismissing dispute against the opponent no.1 Society under Order 9 Rule 5 of the Civil Procedure Code and further directed the trial court to decide the said applications on its own merits.

3. Learned counsel for the petitioners/legal representatives of opponent No.2 submits that, dispute came to be dismissed against the original opponent no.1-Society and as such, the dispute is liable to be dismissed in its entirety. The dispute will not survive against opponent no.2/legal representatives. Learned counsel submits that, apart from this, learned Member

of the Appellate Court has exceeded the jurisdiction by giving liberty to the disputant to file an application to set aside the order dismissing dispute against the opponent No.1-Society passed under Order 9 Rule 5 of Civil Procedure Code. Learned counsel submits that, original disputant has only challenged the order passed below exh.56, 58 and 60 and never challenged the order passed against original opponent no.1-Society under Order 9 Rule 5 of Civil Procedure Code.

4. Learned counsel for respondent No.1 submits that, the learned Member of the Appellate Court has only given liberty to the disputant to file an application to set aside the order dismissing the dispute against opponent No.1 Society under Order IX Rule 5 of Civil Procedure Code. Learned counsel submits that, even if, the order passed by the learned Member of the Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Aurangabad are considered to the extent of those applications at Exh.56, 58 and 60 respectively, the Appellate Court has simply directed the trial court to

consider those applications afresh and no prejudice is likely to be caused to the petitioners herein. Learned counsel submits that, trial court would consider the effect of the dispute being dismissed against the original opponent no.1. Learned counsel submits that, no interference is required in the impugned order.

5. It appears that, the learned Member of the Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Aurangabad has directed the trial Court to consider the applications at Exh.56, 58 and 60 afresh, one by one by giving reasonable opportunities to the parties. Though, the Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Aurangabad has given certain directions and granted liberty to the disputant to file an application to set aside the order dismissing the dispute against opponent no.1-Society passed under Order 9 Rule 5 of the Civil Procedure Code, it appears that, same is beyond the scope of the revision filed against order passed below Exh.56, 58 and 60. Even by deleting said clause no.7 of

the impugned order, I do not find any fault in rest of the order passed by the Member, Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Aurangabad. It is always open for the disputant to file an application for setting aside the order dismissing the dispute against opponent no.1/Society passed under Order 9 Rule 5 of the Civil Procedure Code. It is also for the Co-operative Court to consider the effect of dismissal of the dispute against the original opponent no.1, in case, the order passed under Order 9 Rule 5 of the Civil Procedure Code is not set aside. This writ petition is disposed of with certain modifications in the order impugned as observed above. Hence, the following order.

### **O R D E R**

1. Writ Petition is hereby partly allowed. No costs.
2. Clause No.7 of the impugned order dated 16.4.2015 in Revision No.41/2013 and the observations made in respect of said clause No.7 in the body of the order are hereby quashed and set aside.

3. Rest of the order stands confirmed.
4. Writ Petition accordingly disposed of.

**( V.K. JADHAV, J. )**

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