

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

WRIT PETITION NO. 6993 OF 2016

Smt.Chandrabhaga Shivram Kuwar .. Petitioner
Age. 70 years, Occ. Household,
R/o. Pardeshipura, Nandurbar,
Dist. Nandurbar.

Versus

1. Deelip s/o. Shivram Kuwar .. Respondents
Age. 47 years, Occ. Agri.,
R/o. Pardeshipura, Nandurbar.
2. Virdhawal Shivram Kuwar,
Age. 53 years, Occ. Business,
R/o.
3. Kiran Shivram Kuwar
Age. 37 years, Occ. Business,
R/o. C/o. Jitendra Transport Company
Gate No.27, Vithu Mauli Complex,
Near Gabaril Lee, Near Chetan Logistics,
Chakan, Dist. Pune.
4. Vijay Shivram Kuwar
Age. 33 years, Occ. Business,
R/o. Pardeshipura, Nandurbar,
Dist. Nandurbar.
5. Ajay Shivram Kuwar
Age. 30 years, Occ. Business,
R/o. Pardeshipura, Nandurbar.
6. Vimal Vinod Kuwar
Age. 40 years, Occ. Household,
R/o. At Post Kalabu, Tq. Shahada,
Dist. Nandurbar.

7. Latabai Narendra Kuwar
Age. 30 years, Occ. Household,
R/o. Sir Colony, Near Mobile Tower,
Sarangkheda, Tq. Shahada,
Dist. Nandurbar.
8. Sunita Devidas Wagh,
Age. 50 years, Occ. Household,
R/o. At post Shewale, Tq. Shindkheda,
Dist. Dhule.
9. Pushpalata Rajdhar Sonwane
Age. 45 years, Occ. Household,
R/o. Bhagwati Nagar, Deopur,
Behind L.G. Dhaba, Dhule.
10. Shalini Nitin Borse
Age. 32 years, Occ. Household,
R/o. Near Water Tank, Khetiya,
Dist. Badwani.

Mr.T.G. Gaikwad, Advocate for the petitioner.
Mr.R.S. Wani, Advocate for respondent No.1.

CORAM : S.B. SHUKRE,J.

DATED : 13.02.2017

ORAL JUDGMENT :-

1. Heard. Rule. Rule made returnable forthwith and heard finally by consent.

2. The order dated 27.07.2015 directing issuance of summons is under challenge in this petition on the ground that it has been passed in breach of the requirement of Order V Rule 15 of the Civil Procedure Code.

3. The essential requirement of Order V Rule 15 is that any adult member of the family on whom service of summons is to be made, must be residing with the person to whom summons has been directed. I do not see any such averment in the plaint, nor in the application vide Exh.34 and therefore the order dated 27.07.2015 cannot stand even for a moment in the eye of law. The cause title of the plaint discloses that original defendant No.2-Virdhawal separately resides from original defendant No.1, who is the petitioner.

4. Of course, there is delay in challenging the order dated 27.07.2015. However, since this order is patently illegal and so far as the rule of principle of natural justice is concerned from view point of the party to whom summons has been issued, even though there is delay, this Court would be constrained to interfere in such order. In this view of the matter, the writ petition deserves to be allowed and it is allowed accordingly. The impugned order dated 27.07.2015 is hereby quashed and set aside. The consequential order dated 20.10.2015 is also quashed and set aside. The Trial Court is directed to cause service of summons to respondent/original defendant No.2, as per law if necessary steps are taken by the plaintiff.

5. Rule made absolute accordingly. No costs.

[S.B. SHUKRE, J.]