

(1)

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

WRIT PETITION NO.6880 OF 2012

Sunil Hukmichand Chhajed,
Age: 50 years, Occu: Business,
R/o. City Survey No.3/1719,
Agra Road,
Dhule

..PETITIONER

VERSUS

1. M/s Mishrilal Bakhtawarmal & Co.,
City Survey No. 3/1508,
Agra Road,
Dhule
2. Motilal Mishrilal Chhajed,
since deceased, thr. His legal representatives
- 2A. Smt. Ramkubi Motilal Chhajed,
Age: 72 years, Occu: Household,
R/o. City Survey No.3/1508,
Agra Road,
Dhule
- 2B. Ramesh Motilal Chhajed,
Age: 50 years, Occu: Business,
R/o. City Survey No.3/1508,
Agra Road,
Dhule
- 2C. Suresh Motilal Chhajed,
Age: 49 years, Occu: Business,
R/o. City Survey No.3/1508,
Agra Road,
Dhule
- 2D. Kishor Motilal Chhajed,
Age: 48 years, Occu: Business,
R/o. City Survey No.3/1508,
Agra Road,
Dhule
- 2E. Sau. Kusum Tarachandji Kotecha,
Age: 57 years, Occu: Household,
C/o. Shri. Tarachandji Kotecha,

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Main Road, Malkapur,
Dist. Buldhana

- 2F. Sau. Shobha Rajkumarji Bamb,
Age: 57 years, Occu: Household,
R/o. C/o. Rajkumar Bamb,
M.T. Cloth Market,
Indore
- 2G. Sau. Pushpa Basantlal Golecha,
Age: 56 years, Occu: Household,
C/o. Shri. Basantlalji Inderchandji Golecha,
R/o. Sadar Bazar, Main Road,
Nagpur
- 2H. Sau. Gunmala Dilipchandji Golecha,
Age: 50 years, Occu: Household,
C/o. Lakhichand Machinery Mart,
Central Avenue, Nagpur,
since deceased, thr. L.R.
- 2H-1. Shweta Sushil Mehta,
Age: Major, Occu: Household,
C/o. 98/A, Wakle Bhag,
3rd lane, Sangli
3. Lakhichandji Mishrilal Chhajed,
since deceased, thr. his legal representatives
- 3A. Subhash Lakhichand Chhajed,
Age: 56 years, Occu: Business,
R/o. City Survey No.3/1508,
Agra Road,
Dhule
- 3B. Anil Lakhichand Chhajed,
Age: 52 years, Occu: Business,
R/o. City Survey No.3/1508,
Agra Road,
Dhule
- 3C. Dilip Lakhichand Chhajed,
deceased, thr. Legal representatives
- 3C-1. Shobha Dilip Chhajed,
Age: 44 years, Occu: Household
- 3C-2. Dhiraj Lakhichand Chhajed,
Age: 21 years, Occu: Education

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3C-3. Nikhita Dilip Chhaged,
Age: 13 years, Occu: Education,
Minor, thr. Guardianship of mother
Shobha Dilip Chhaged

Respondent Nos.3C-1 to 3C-3
R/o. Trimurti Chowk, CIDCO,
Nashik

3D. Smt. Rukhminibai Lakhichand Chhaged,
deceased

3E. Tarabai Suresh Jain,
Age: 50 years, Occu: Household,
R/o. Nakshtram Apartment,
Opp. Bhagirath High School,
Jalgaon

4. Smt. Ratanbai Maniklal Chhaged,
since deceased, thr. her legal representatives

4A. Mahendra Maniklal Chhaged,
Age: 57 years, Occu: Business,
R/o. Agra Road,
Dhule

5. Smt. Rambhabai Kanhaiyalal Chhaged,
since deceased, thr. legal heirs

5A. Premsukh Kanhaiyalal Chhaged,
Age: 54 years, Occu: Business,
R/o. 'Premsukh', Saraswati Colony,
Datta Mandir, Deopur
Dhule

5B. Bansikumar Kanhaiyalal Chhaged,
Age: 72 years, Occu: Business,
R/o. 'Premsukh', Saraswati Colony,
Datta Mandir, Deopur
Dhule

5C. Smt. Leelabai Kanhaiyalal Bothra,
Age: 70 years, Occu: Household,
R/o. Sanjay, Main Road, Chopada,
District Jalgaon

5D. Mohan Kanhaiyalal Chhaged,
Age: 62 years, Occu: Chartered Accountant,
R/o. Wallabhnagar, Malegaon Road,
Dhule

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- 5E. Madan Kanhaiyalal Chhajed,
Age: 54 years, Occu: Business,
R/o. Shital Paradize,
Behind Sattyam Sweets,
Govindnagar,
Nashik
- 5F. Smt. Mangala Dilipchandji Lunawat,
Age: 52 years, Occu: Household,
R/o. 3, Tapadiya Nagar,
Behind Warad Hospital,
Shahnur Miyan Dargah Road,
Aurangabad
6. Hukumchandji Mishrilal Chhajed,
since deceased, thr. his legal representatives
- 6A. Vinod Hukumchandji Chhajed,
Age: 57 years, Occu: Business,
R/o. City Survey No.3/1719,
Agra Road,
Dhule
- 6B. Pramod Hukumchandji Chhajed,
Age: Major, Occu: Business,
R/o. City Survey No.3/1719,
Agra Road,
Dhule
- 6C. Smt. Ramadevi Hukumchandji Chhajed,
Age: Major, Occu:
R/o. City Survey No.3/1719,
Agra Road,
Dhule
- 6D. Usha Hukumchandji Chhajed,
Age: 40 years, Occu: Business,
R/o. City Survey No.3/1719,
Agra Road,
Dhule

..RESPONDENTS

Mr Subodh P. Shah, Advocate for petitioner;
Mr C. K. Shinde, Advocate for respondent Nos. 1, 2B to 3C-2, 3E, 4A & 5D
to 5F

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CORAM : NITIN W. SAMBRE, J.

DATE : 28th November, 2017

ORAL ORDER:

Regular Civil Suit No.456 of 1990 is pending adjudication for last more than 27 years.

2. Defendant no.3 (c) is claimed to have been died in 1999, for bringing whose legal representatives on record, application (Exh.127) came to be moved on 12th July, 2006, stating that delay of seven years be condoned and abatement be set aside. The cause for delay mentioned in the application appears to be non-availability of address of the legal representatives of the said defendant.

3. Application Exh.127 came to be rejected by impugned order dated 12th January, 2011.

4. Another application (Exh.158) came to be moved on 15th April, 2011 praying for setting aside abatement. Of course, in the said application no prayer for condonation of delay is made. Application (Exh.158) again came to be rejected by order dated 25th July, 2012. Thus, the present petition.

5. Mr Shah, learned Counsel appearing on behalf of petitioner-plaintiff would submit that the suit is for a relief of dissolution of partnership and

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rendition of accounts. According to him, the death of the defendant, whose legal representatives are not brought on record within time, cannot be considered to be an act on the part of the petitioner-plaintiff intending to buy time and protract the proceedings. Mr Shah would urge that it is the defendants, who are in possession of the properties and plaintiff-petitioner is at losing end qua the prayer. He would urge that the limitation prescribed has to be considered as a procedural part and refusal on the part of the Trial Court to condone delay and permit bringing legal representatives of defendant No.3 (c) on record by rejecting the prayer is an unreasonable order. He would rely upon the principles laid down by the Apex Court in the matters of **N. Balakrishnan vs. M. Krishnamurthy**, reported in **(1998) 7 Supreme Court Cases 123** and **Banwari Lal (Dead) by legal representatives and another vs. Balbir Singh**, reported in **(2016) 1 Supreme Court Cases 607**.

6. Mr Shah would also rely upon certain factual matrix viz. death of defendant No.3, filing of appearance by lawyer stating that he will be appearing for said defendant No.3 and non-taking of consequential steps of putting appearance of legal representatives of defendant No.3 by the said lawyer.

7. Mr Shah then would urge that looking to the nature of dispute, the Court by putting the present petitioner to certain conditions, may order condonation of delay and permit him to bring legal representatives of defendant No.3 (c) on record by setting aside abatement.

8. Per contra, Mr Shinde, learned Counsel appearing on behalf of respondents would oppose the claim on the ground that though the petitioner had taken hamdast to serve the legal representatives of defendant No.3 (c), same was not produced before the Court for the reasons best known to him, though it is claimed that petitioner remained in custody of the acknowledgement. Mr Shinde then would urge that the present petition remained pending before this Court for more than five years without effecting service on the unserved respondents. According to him, since delay is not properly explained, the petition is liable to be dismissed.

9. From the rival contentions of the parties, it is required to be noted that the suit in question is pending for more than 27 years as it was instituted in 1990.

10. It is not in dispute that defendant No.3 (c) expired in 1999, for bringing legal representatives on record, an application came to be moved in 2006 i.e. after a period of about seven years. Perusal of the said application does not depict a single reason satisfying the delay caused to be held to be *bona fide*. Apart from above, the conduct of the petitioner who claimed to have served the legal representatives of defendant No.3 (c) and kept acknowledgement with him for longer period is also an issue which is required to be appreciated against present petitioner.

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11. During the conduct of the trial of the suit, particularly at the stage of bringing legal representatives of defendant No.3 (c) on record, the petitioner-plaintiff was negligent not only on one occasion, but as reflected herein above on number of occasion.

12. Mr Shah is right in inviting attention of this Court to the judgments of the Apex Court cited supra, however, the principle laid down therein would not apply to the facts of the case for the reason of the conduct of the petitioner in not explaining delay by citing single convincing reason, leave apart even the acknowledgements of service were not produced. The support sought to be drawn from the judgments cited supra would hardly be of any assistance to the present petitioner.

13. In view thereof, no interference is warranted in exercise of extraordinary jurisdiction of this Court. Thus, the petition fails and stands dismissed.

(NITIN W. SAMBRE, J.)

amj