

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.220 of 2013**

1. Mr. Narendra Bhimsen Patil,
age 36 years, son of Bhimsen Patil,
Profession: Business resident of
Post : Halkarni, Halkarni Phata,
Tal : Chandgad, Dist : Kolhapur,
Maharashtra
2. Mr. Nitin Narayan Patil,
son of Narayan Patil,
age 35 years, resident of
Post : Halkarni, Halkarni Phata,
Tal : Chandgad, Dist : Kolhapur,
Maharashtra
3. Mr. Vishwas Sakharam Pawar
son of Sakharam Pawar,
Age-70 years, Profession : Retired
Teacher, resident of Shahu Nagar,
Belgaum, Karnataka
4. Mr. Janaba Nigo Murkute,
son of Ningo Murkute, Age-60
years, Profession Farmer, resident
of at Post : Karve, Murkutwadi,
Tal : Chandgad, Dist : Kolhapur,
Maharashtra.
5. Mr. Jyacky Seleston D'Souza,
son of Seleston D'Souza,
Age-55 years, Profession : Farmer,
resident, of at Post : Madkhol,
Tal : Sawantwadi, Dist : Sindhudurg,
Maharashtra
6. Mr. Ganpat Dattaram Desai,
son of Dattararn Desai,
Age-56 years, Profession : Business,
resident of at Post : Kalane,
Tal : Doddamrg, Dist. Sindhudurg,
Maharashtra

7. M/s. Doddamarg Sahakari Kaju
VM Karakhana Maryadit, a society
registered under Maharashtra
Co-op Societies Act, through
its Chairman Jyacky D'Souza,
Chairman, with office, Post
Madkhol, Sawantwadi,
Sindhudurg, Maharashtra .. Petitioners

Vs.

1. Mr. Surendra B. Borkar,
son of late B. B. Borkar,
Age-63 years, Occupation-Farmer,
resident of Shree Building,
Bhayali Peth, Bicholim,
Goa-403 504,
2. M/s. Mahalaxmi Developers,
Building Contractor and
Partnership firm registered
under Indian Partnership Act,
1932, with office R M. 101,
Karvir Housing Society,
M I D C, G Block,
Shahu Nagar, Chinchwad,
Pune- 411019.
3. Mr. Vishwanath Balaya Swami,
son of Balaya Swami Age-55
years, Occupation- Construction,
R M. 101 Karvir Housing Society,
M I D C, G Block,
Shahu Nagar, Chinchwad,
Pune- 411019.
4. Mr. Sudhir Tukaram Patil,
son of Late Tukaram Patil
Age-40 years,
Occupation Construction,
Residence : R M 169 "Ayodhya"
M I D C, G Block,
Shahu Nagar, Chinchwad,

Pune- 411019.

5. Mrs. S. Vishwanath Swami,
wife of Vishwanath Balaya Swami
Age : 45 years,
Occupation-Construction,
Address : R M. 10 1
Karvir Housing Society,
M I D C, G Block,
Shahu Nagar, Chinchwad,
Pune- 411019.
 6. Mr. Sharad Mahajan,
Age-58 years,
Occupation-Architect
Address : 1/62B Padamdarshan
Society, Sahakar Nagar,
Satara Road, Pune.
 7. Mr. Prashant Deshmukh,
Age-57 years
Occupation-Architect
Address : 1/62 B Padamdarshan
Society, Sahakar Nagar,
Satara Road, Pune.
 8. Mr. Sheshrao Pandarinath
Sangale, son of Pandharinath
Sangale, Age-55 years,
Profession : service,
Director of Marketing,
Deptt. of Cooperation,
Central Building,
Pune-1.
 9. Mr. Shirish Kulkarni,
Age : 40 years,
Profession : Service,
District Deputy Registrar,
Deptt. of Cooperation,
P.O. Sindhudurg Nagari,
Oras, Sindhudurg,
Maharashtra
- .. Respondents.

Mr. Vilas P. Thali, Advocate for the petitioners.

Respondent no.1 in person.

CORAM :- C. V. BHADANG, J.

DATE:- 9th August, 2017

ORAL JUDGMENT :

By consent of the parties, the petition is taken up for final hearing as the petition involves a short question.

2. The petitioners are defendant nos.9 to 15 before the Trial Court in Special Suit No.18/2012/A on the file of the learned Civil Judge, Senior Division, Panaji. The said suit is filed by the first respondent, who appears in person. A perusal of the plaint shows that the suit is filed under Order XXXVII of the Code of Civil Procedure (Code, for short) as a Summary Suit.

3. It appears that the petitioners filed an application purportedly under Order XXXVII Rule 3(5) of the Code in the said suit, which has been rejected by the learned Trial Court by the impugned order dated 08/01/2013.

4. I have heard Shri Thali, the learned Counsel for the

petitioners and the respondent no.1, who appears in person, who is only the contesting party.

5. It is submitted by Shri Thali, the learned Counsel for the petitioners that looking to the prayer in the suit, the suit cannot lie under Order XXXVII of Code as a summary suit. The petitioners have also raised certain contentions about the Court of learned Civil Judge Senior Division, Panaji, lacking territorial jurisdiction to try the suit. Shri Thali has pointed out the judgment and order passed by this Court on 12/06/2013 in W.P. No.222/2013 (***M/s. Mahalaxmi Developers and Others Vs. Mr. Surendra Borkar and others***). It is submitted that the said petition was filed by the defendant nos.1 to 6 challenging a similar order dated 08/01/2013, whereby the application filed by the petitioners therein, for leave to defend the summary suit, came to be rejected on the ground that the said application was filed beyond the time prescribed.

6. The respondent no.1, who appears in person submitted that the order passed in W.P.No.222/2013 is against the ratio laid down by the Supreme Court in the case of ***Mechelec Engineers and Manufacturers Vs. M/S. Basic Equipment***

Corporation; (1976)4 SCC 687. He, however, does not dispute that he has not challenged the order passed by this Court in W.P.No.222/2013. The respondent no.1 has urged that the petitioners have already filed their written statement and the matter be remitted back to the learned Trial Court. The respondent no.1 also insisted that appropriate orders, as may be deemed fit, may be passed as the suit is pending from the year 2013.

7. I have carefully considered the rival circumstances and the submissions made.

8. The Supreme Court in the case of **Mechelec Engineers** (supra), has *inter alia* laid down the principles governing the jurisdiction of this Court in Revision Application under Section 115 of the Code as also the principles governing grant of leave under Order XXXVII of the Code.

9. A perusal of para 8 of the impugned order clearly shows that the application has not been rejected on the ground that there is no plausible defence available to the petitioners, but only on the ground of delay of about 28 days. In W.P.

No.222/2013 filed by some other defendants challenging a similar order, this Court has directed the application for leave to defend being considered on its own merits. This order has not been challenged by the respondent no.1 any further. Thus, in my considered view, the petition can be disposed of in similar terms. Hence, the following order is passed :

ORDER

- (i) The impugned order dated 08/01/2013 is quashed and set aside.
- (ii) The application filed by the petitioners for leave to defend the suit is directed to be considered by the learned Judge on its own merits after hearing the parties in accordance with law as expeditiously as possible.
- (iii) Rule is made absolute in the above terms.

C. V. BHADANG, J.

SMA