

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.5772/2015

1. Sagar Subhashrao Mule,
aged about 25 Yrs.

2. Mayur Subhashrao Mule,
aged about 20 Yrs.,

All R/o Behind Gopal Nagar,
Devrankar Nagar, Amravati.

..Petitioners.

..Vs..

1. Rajesh Dulichand Bijore,
aged about Major, R/o Morbag,
back side of old Cotton Market,
Amravati.

2. Smt. Sunanda Subhashrao Mule,
aged about major, Occu. Household work.

3. Ku. Jyoti Subhashrao Mule,
aged about major.

4. K. Jyotsana Subhashrao Mule,
aged about major.

5. Ku. Priti Subhashrao Mule,
aged about major.

6. Ku. Swati Subhashrao Mule,
aged about major.

All 2 to 6 R/o Behind Gopal Nagar,
Badnera By-pass Road, Devrankar
Nagar, Amravati.

..Respondents.

Shri Anjan De, Advocate for the petitioners.
Shri Ranjeet D. Bhuihar, Advocate for respondent No.1.

CORAM : Z.A. HAQ, J.

DATE : 14.12.2017.

ORAL JUDGMENT

1. Heard Shri Anjan De, Advocate for the petitioners and Shri Ranjeet D. Bhuibhar, Advocate for respondent No.1. None for respondent Nos.2 to 6 though served.

2. **Rule.** Rule made returnable forthwith.

3. The respondent No.1 had filed civil suit praying for decree for specific performance of contract. At the time of filing of the civil suit, the present petitioners were minor and were represented by their natural guardian mother, who was also impleaded as defendant No.1 in the civil suit. The civil suit is decreed by the judgment dated 27th July, 2007. The judgment and decree passed by the trial Court is challenged in appeal which is pending. This appeal is filed by the defendants, including the present petitioners, and as at the time of filing of the appeal in 2007, the petitioners were minor, they were represented by natural guardian mother. On attaining majority, the petitioners filed application (Exh. No.50) under Order 32 Rule 12(2) of the Code of Civil

Procedure praying that the next friend, who represented them be discharged. The respondent No.1 opposed the application. The application (Exh. No.50) is rejected by the learned District Judge observing that the application does not reveal the date on which the petitioners attained majority and it was not necessary to grant any further opportunity to the petitioners to contest the appeal on different grounds.

4. The learned Advocate for the petitioners has submitted that the petitioners have no intention to contest the appeal on any other ground except those raised in the memorandum of appeal filed on their behalf by their natural guardian.

5. Though the application is opposed now also on the ground that the petitioners have nowhere given the date on which they attained majority and have not explained the delay in filing the application (Exh. No.50), I find that the objection is unsustainable and the impugned order is required to be set aside. The learned District Judge has wrongly rejected the application observing that the petitioners cannot be granted an opportunity to contest the appeal on different grounds, it is not the case of the petitioners that they intend to contest the appeal on different grounds. The prayer of the petitioners was only to discharge the natural guardian and permit the petitioners to contest the appeal in their own names.

6. In view of the above, following order is passed:

(i) The impugned order is set aside.

(ii) The respondent No.2 - Smt. Sunanda Subhashrao Mule is discharged as guardian *ad litem* of the petitioners and the petitioners are permitted to contest the appeal in their own names.

Rule is made absolute in the above terms.

In the circumstances, the parties to bear their own costs.

JUDGE

Tambaskar.