

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

25. WRIT PETITION NO. 12100 OF 2018

1. Babu Eknath Shinde (died)
through legal representatives
Madhu Baburao Shinde,
age major occupation agriculture
R/o Bokangaon Taluka and District Latur.
2. Manohar Eknath Shinde (died)
through legal representatives:
 - 2/a. Bhagwat S/o Manohar Shinde, age 65 years
 - 2/b. Bhausaheb S/o Manohar Shinde, age 63 years
 - 2/c. Dnyanoba S/o Mahohar Shinde, age 61 years
Nos. 2/a to 2/c agriculturists by occupation and
R/o Bokangaon Taluka and District Latur.
 - 2/d. Basant S/o Manohar Shinde,
age 85 years occupation agriculture
R/o near Suvarna Wood Industry,
Vivekanand Chowk, Latur.
 - 2/e. Nivrutti S/o Manohar Shinde,
age 50 years occupation agriculture
R/o near Krupa Sadan English School, Latur. ... Petitioners

Versus

Dhanraj @ Dhananjaya S/o Dattu Datal
age 68 yers occupation service and agriculture
R/o Bokangaon Taluka and District Latur. ... Respondent

Mr. A.H. Kasliwal, Advocate for petitioners

Coram : N.M. Jamdar, J.

Date : 19 November 2018.

ORAL ORDER :

1. By this petition, the petitioners have challenged the order dated 12 April 2018, whereby the application of the petitioner/ judgment debtor for setting aside order of no cross-examination and for giving him opportunity to cross examine the decree holder and his witnesses, has been refused.

2. Learned Counsel for petitioners submitted that petitioners had engaged an Advocate and due to fault of their Advocate, say could not be filed to execution proceedings and; if an opportunity is given to file say, petitioners can cross examine decree holder and his witnesses, as there are substantive objections to execution of the decree. Learned Counsel for the respondent opposes and points out that the suit was filed in the year 1988 and *Darkhast* proceedings were pending for almost 10 years.

3. The decree is of the year 1991 and till the date same has not been executed. Merely by stating that due to fault of the Advocate, Say could not be filed cannot be assumed in favour of the petitioners, as the lapse is almost of more than eight years. The Apex Court has repeatedly cautioned the courts to ensure that process of

law is not abused and no unnecessary impediments are placed in the way of execution of decree.

4. Considering that the petitioners have invoked the writ jurisdiction of this Court and there is no satisfactory explanation of the lapses for almost of eight years nor there is any substantive objection placed on record by the petitioners, it cannot be said that by impugned order any failure of justice has been caused. The impugned order is in furtherance of interest of justice. No interference is warranted in writ petition.

5. The writ petition is accordingly rejected.

N.M. Jamdar, J.