

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

914 WRIT PETITION NO.13406 OF 2018

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Suresh Shankarrao Bhoite and others.

..Petitioners.

Versus

Omkar Laxman Bhoite

..Respondent.

Advocate for Petitioners : Mr. Deshmukh Anand I.

Advocate for Respondent : Mr. Patil Atmaram J.

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Coram : N.M. Jamdar, J.

Dated : 11 December 2018

ORAL ORDER :-

By this petition, the petitioners are challenging the order passed by the learned Civil Judge Junior Division, Jalgaon, dated 13 August 2018 rejecting the application filed by the petitioners seeking condonation of delay and setting aside the exparte decree. The delay that is sought to be condoned is of 11 years, 2 months and 24 days.

2. The respondent/original plaintiff had filed the suit in the year 1998. Thereafter, suit was registered as 338 of 2002 and sent to

the learned Civil Judge J.D. Jalgaon. The petitioners were served with the suit summons. They failed to appear and did not file their written statement. Order to proceed ex-parte against the petitioner nos. 2 and 3 was passed on 8 August 2006; on 5 December 2003 against the petitioner no.4; and on 18 November 2003 against petitioner no.7. Thereafter, suit was decreed on 19 January 2007. The execution proceedings were filed and when decree was about to be executed it is on 12 April 2018 that the petitioners appeared to resist the same. Learned Civil Judge, after noting that the notices issued to the petitioners were served and they had full knowledge of the same, refused to condone the delay. The learned Civil Judge, after holding that no cause was made out and that the respondent-plaintiff was 85 years of age, imposed costs of ₹ 5,000/- and rejected the application.

3. When the petition was called out, the learned counsel for respondent pointed out that the sole respondent-plaintiff expired on 17 August 2018. He pointed out that on 20 August 2018, an application was made to bring his heirs on record in the execution proceedings, which the petitioners were fully aware, and this petition filed thereafter is against only the respondent/plaintiff who was already no more. Till today heirs of the respondent are not brought on record. This petition filed against the dead person with full knowledge is required to be dismissed on that count alone. The petitioners had

totally denied that they received a summons. This stand was falsified since the learned judge found that suit summons was served.

4. The learned counsel for the petitioners then contended that only one of the petitioners had received the suit summons and the one who was actually occupying the suit premises had not received the same, and because there is strained relationship between these petitioners inter-se, the petitioners could not appear in the suit. This submission is completely contrary to the case of the petitioners themselves. All the petitioners have filed a joint application seeking to condone the delay on the ground that they were unaware about the suit. There is no such reference to any strained relationship or that one of the petitioners applicants having received the summons. All the applicants together through one Advocate have filed the application.

5. The Courts must be vigilant that the process of law, especially in the execution proceedings, is not abused by dishonest litigants and that Decree Holders are not deprived of the fruits of the decree by their machinations. The decree holder passed in pending of this petition awaiting for the execution of the decree. This is a fit case where exemplary costs needs to be imposed on the petitioners. The learned Civil Judge has imposed costs of ₹ 5,000/-. The respondent

had sought costs of ₹ 1 lakh. The costs need to be imposed to send a strong message to prevent the abuse of process of law. Each of the petitioners who have jointly deprived the respondent/decreed holder of fruits of his decree and have moved a petition in this fashion, will deposit ₹ 10,000/- (₹ Ten Thousand, each) in the executing Court within a period of four weeks from today. If the costs are not deposited, the executing Court will issue necessary directions to the Collector to recover the same as an arrears of land revenue.

6. Writ Petition is accordingly dismissed with above terms.

(N.M. Jamdar, J.)

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