

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

WRIT PETITION No. 8831 of 2015

1. Bhalerao Chindha Pawar (died)
through legal representatives :
 - 1/A. Sahebrao S/o Bajirao Pawar,
age 59 years occupation retired
R/o Amalner, near Trikoni Garden,
Taluka Amalner District Jalgaon.
 - 1/B. Jagdish S/o Bajirao Pawar,
age 50 years occupation –
R/o Kalje via Pali Taluka Mangaon District Raigad
 - 1/C. Subhadrabai W/o Bajirao Pawar (died)
 - 1/D. Kusum Prabhakar Bhalerao,
age 64 years occupation –
R/o Upati Bazara Taluka Kinwat District Nanded.
 - 1/E. Vimal Pandurang More,
age 59 years occupation –
R/o Krupaprasad, Tarkheda Tal. & Dist. Amravati
 - 1/F. Indubai Madhukar Thakur,
age 54 years occupation household
R/o N-3, L-12, old CIDCO, Nashik Tal. & Dist. Nashik
2. Rajaram Chindha Pawar (died)
through legal representatives:
 - (i) Kamalbai Rajaram Pawar (died)
 - (ii) Shantabai Rajaram Pawar,
age 64 years occupation household
R/o Gurudev Chhaya, near Trikoni Garden,
Amalner Taluka Amalner Dist. Jalgaon.
 - (iii) Sau. Veena Subhash Mahale,
age 44 years occupation household
R/o Longare, Bank of India, Longare
Taluka Khanapur District Sangli.

- (iv) Sau. Meenabai Sarjerao More,
age 36 years occupation household
R/o Dahivadi, near Post Office, Saindhiwada
Taluka Man District Satara.
- (v) Sau. Kalpana Shivaji Mahale,
age 34 years occupation household
R/o Dahivadi Taluka Dahivadi, near Post Office,
Saindhiwada Taluka Man District Satara
- (vi) Sunanda Rajaram Pawar,
age 32 years occupation household
R/o near Trikoni Garden, Amalner
Taluka Amalner District Jalgaon
- (vii) Ashabai Rajaram Pawar,
age 30 years occupation and R/o as above
- (viii) Diwakar Rajaram Pawar,
age 45 years occupation service R/o as above.

...Petitioners
(Original plaintiffs)

VERSUS

- 1. Murlidhar S/o Sampat Patil
age 69 years occupation -
R/o Tambepura, Amalner Taluka Amalner District Jalgaon
- 2. Bhaidas Pandharinath Patil (died)
through legal representatives:
 - 2/A. Latabai Wd/o Bhaidas Patil,
age 49 years occupation labour
R/o New Plot Area, Hatale
Taluka Chalisgaon District Jalgaon.
 - 2/B. Yogesh S/o Bhaidas Patil,
age 24 years occupation & R/o as above
 - 2/C. Dinesh S/o Bhaidas Patil,
age 20 years occupation and R/o as above
- 3. Ramchandra Pandharinath Patil,
age 55 years occupation agriculture
R/o Tambepura, Amalner Tal. Amalner Dist. Jalgaon

4. Chatur Pandharinath Patil,
age 45 years occupation and R/o as above
5. Kamalbai Pandharinath Patil,
age 47 years occupation household R/o as above
6. Pramilabai W/o Adhar Patil,
age 42 years occupation and R/o as above
7. Annapurna W/o Subhash Patil,
age 40 years occupation and R/o as above
8. Nandabai D/o Pandharinath Patil,
age 38 years occupation and R/o as above
9. Sumanbai W/o Pandharinath Patil,
age 37 years occupation household
R/o Sonwad Taluka Shahada District Nandurbar
10. Surekha Pitambar Patil,
age 34 years occupation and R/o as above
11. Anita Pitambar Patil,
age 33 years occupation and R/o as above
12. Mahesh Pitambar Patil,
age 38 years occupation agriculture R/o as above.

...Respondents

(original defendants)

Mr. R.M. Deshmukh, Advocate for petitioners

Mr. G.S. Rane, Advocate for respondent No.1

CORAM : SUNIL P. DESHMUKH, J.

DATE : 4th January, 2019

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally by consent.

2. It transpires that special civil suit bearing no. 3 of 1993 (now regular civil suit no. 9 of 2012) had been instituted by the petitioners for specific performance of agreement of sale and confirmation of possession. The suit had been pending since then and some time in the year 2007, it appears, defendant No.2 died. It further appears that a *pursis* came to be filed on behalf of the defendants/respondents in respect of the same in 2007. In the meanwhile, petitioner No.1/A, who had been looking after the matter, had been transferred from Amalner to some other place. Other petitioners are agriculturists and had been relying and depending on petitioner No.1/A. The *pursis* filed had not been brought to their notice. While taking stock of the situation around 2011, it transpired that defendant No.2 died some time in 2007 and accordingly an application under Exhibit-250 for condonation of delay in bringing his legal heirs on record came to be moved by plaintiffs/petitioners.

3. Said application had been resisted on behalf of respondents No. 2 to 7, submitting that the same is not maintainable, there is no reference to date of death of

defendant No.2 and there is no sufficient reason given and the application is delayed by four years. The court thereupon had passed an order on 15th June 2011 to the effect that the defendants have filed *pursis* about death of defendant No.2 Bhaidas Patil in the year 2004 (as per said application, defendant No.2 died in 2007) and the plaintiffs have not brought his legal heirs on record in spite of opportunity and there is inordinate unexplained delay showing that the plaintiffs are not diligent in prosecuting the suit and, as such, the application was rejected. In the circumstances, as advised, the petitioners had filed an appeal against order dated 15th June 2011 rejecting their application for bringing legal heirs of deceased defendant No.2 on record. The same was held to be untenable by the appellate court and, as such, the petitioners are before this court.

4. Learned counsel Mr Dehmukh contends that though there may be delay of four years, however, that has been accounted for with reasons viz; petitioner No.1/A, who was looking after the proceedings in the suit since the year 1993, had been transferred from Amalner to some other

place and petitioner No.2 died leaving his heirs-petitioners No.2(i) to (viii), who are agriculturists. The *pursis* filed on behalf of the defendants about death of defendant No.2 had not been realised by them until 2011 since petitioner No.1/A had been away from Amalner. In 2011 it had been realized that defendant No.2 is no more and died in 2007. An application accordingly had been moved for bringing his legal heirs on record alongwith application for condonation of delay. He submits that trial court has dealt with the matter cursorily and has not taken into account factual aspects properly, as would be emerging, from date of death of defendant No.2 in 2007 and thus, the court has wrongly rejected the application. He further purports to point out that defendants No. 2 to 7 have purportedly taken the application casually. He submits that the petitioners on being advised had filed misc. civil appeal which ultimately had been turned down as not maintainable. He submits that the petitioners are illiterate and unaware of legal procedure and, as such, the matter be considered accordingly and lenient view be taken, as the petitioners will suffer irreparable loss. He, therefore, urges to allow the writ

petition.

5. Mr Girish Rane, learned counsel appearing for respondent No.1, however, purports to state that some rights have accrued with the abatement of the matter against defendant No.2 to defendant No.1, submitting that the application lacks of justification for delay. For said purpose, he refers to and relies on the decision of the Supreme Court in the case of *Balwant Sing (dead) Vs. Jagdish Singh and others*, reported in 2010 AIR SCW 4848. He purports to refer to observations appearing in paragraph No. 14 therein. He submits that having regard to the same, it would not be a case wherein it can be said that the application depicts sufficient cause for delay and he therefore, resists the request under the writ petition.

6. While arguments have been advanced on behalf of defendant No.1, as above, there does not appear to be any particular resistance on behalf of the legal heirs of deceased defendant No.2, who have not put in their appearance despite service long before, which suggests that they do not seriously oppose the request made under

the writ petition. Coupled with the same, veracity of factual aspects, as contended on behalf of the petitioners, about the matter being looked after by petitioner No.1/A and had been pending since 1993 and defendant No.2 died in 2007 and in 2007 *pursis* came to be filed and it had not been noticed by the petitioners till 2011, is not seriously disputed. It appears that petitioners could not take steps to bring legal heirs of deceased defendant No.2 on record under aforesaid circumstances.

7. In the wake of such a situation and taking into account the guidelines as would be appearing under the decision of the Supreme Court in the case of *Collector, Land Acquisition, Anantnag vs. Mast. Katiji*, reported in *AIR 1987 SC 1553*, particularly in paragraph 3 thereunder and in the case of *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others* reported in *(2013) 12 SCC 649*, it appears to be expedient to indulge into the request made on behalf of the petitioners. Even otherwise, it appears that trial court has not dealt with the relevant aspects properly.

8. Writ petition is, therefore, allowed in terms of

prayer clause 'C'. Impugned order dated 15th June 2011 passed by trial court on Exhibit - 250 in special civil suit No. 3 of 1993 (now bearing regular civil suit No. 9 of 2012) is set aside. Application Exhibit-250 stands allowed.

9. The suit be proceeded with expeditiously and the same be disposed of as early as possible.

10. Rule made absolute accordingly.

11. Writ petition is disposed of.

**(SUNIL P. DESHMUKH)
JUDGE.**

Madkar