

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

WRIT PETITION NO. 5087 OF 2019

GANESH S/O KASHINATH GULVE AND ANOTHER
VERSUS
MR.DHUNDURAJ BHUJANGRAO LOHARE AND OTHERS

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Advocate for the Petitioners : Shri M. P. Tripathi
Advocate for Respondent Nos. 1 and 3: Shri A.N.Sabnis
h/f. Shri V. D. Gunale
AGP for Respondent Nos. 4 and 5 : Shri S. R. Yadav -
Lonikar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 27th NOVEMBER, 2019.

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PER COURT :

1. Leave to delete respondent No. 2. Deletion is permitted and shall be carried out forthwith.
2. The petitioners are the original disputants in dispute No. 219/2016 pending before the learned Co-operative Court, Latur. Issue is as regards the allotment of plots.
3. Respondent No. 1 had not stepped into the witness box and had not examined himself. He was

the chairman of respondent No. 3 Society. The disputants led their evidence and anticipating that respondent No.1 would be stepping into the witness box, they closed their evidence by tendering a purshis. Subsequently, respondent No.1 did not step into the witness box and submitted an evidence closing purshis. After the remaining respondents were examined, the petitioners woke up from their slumber and filed application Exhibit 107 on 15/12/2017 praying for issuance of witness summons to respondent No.1. By order dated 05/01/2018, the Co-operative Court allowed the application and permitted the examination of respondent No.1.

4. Respondent No.1 alone preferred Revision Application No. 3/2018 before the Maharashtra State Co-operative Appellate Court, Aurangabad. By judgment and order dated 16/02/2019, the Appellate Court allowed the revision and set aside the order dated 05/01/2018. It is recorded in paragraph 5 of the impugned order that these petitioners remained absent and did not contest the revision.

5. The learned Advocate for respondent No.1 and 3, the lone contesting party, has strenuously defended the impugned judgment and submits that this petition deserves to be dismissed with costs. He points out, as to how these petitioners were careless and negligent. They allowed the Revision Petition to be considered by the Appellate Court and did not participate in the said proceedings which leads to a presumption that they are unconcerned with the decision in the said revision. He, therefore, submits that the petition be dismissed by imposing heavy costs.

6. I do find from the record that the petitioners could have moved the Co-operative Court seeking leave to examine respondent No.1 after he closed his evidence by tendering a no evidence purshis. Nevertheless, it is their contention vide Exhibit 107 that the entire record pertaining to the Housing Co-operative Society is with respondent No.1 and unless he is examined, the original record in his custody cannot be extracted or brought on record.

7. The Honourable Apex Court has laid down the law that a litigant should be given a reasonable opportunity to put forth his best evidence. The dispute has been filed in a representative capacity and these two petitioners represent 14 members. It is a matter of their plots in the society which are immovable property involved.

8. In view of the above, this petition is allowed with costs of Rs. 25,000/-. The impugned order passed by the Appellate Court, which is based primarily on the belief that as respondent No.1 does not want to lead evidence, nobody can force him, stands quashed and set aside and the order of the Co-operative Court dated 05/01/2018 is sustained.

9. The learned Advocate for respondent Nos. 1 and 3 submits that an amount of Rs. 5,000/- may be donated for a public cause and the remaining amount of Rs. 20,000/- would be withdrawn by respondent No.1.

10. In view of the above, the petitioners would deposit the amount of Rs. 25,000/- in this Court on or before 16/12/2019 and shall produce a receipt of such deposit before the Co-operative Court. Respondent No.1 shall withdraw an amount of Rs. 20,000/- and the amount of Rs. 5,000/- shall be transmitted by the Registry of this Court to the orphanage home i.e. "Shantivan", Arvi, Tq. Shirur Kasar, District Beed, in the name of **"Bhavani Vidhyarthi Kalyan Pratishthan, Arvi"** by way of electronic transfer (State Bank of India, Branch Shirur (Kasar), Account No.33446000963, IFSC Code : SBIN0005995).

11. Respondent No. 1 shall appear before the Co-operative Court at 11.00 a.m. on 20/12/2019 and the petitioners shall conclude the examination in chief by 05.00 p.m. on the same date.

(RAVINDRA V. GHUGE, J.)

shp/-