

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 4626/2017

Govind S/o Gendlal Thakur,
Aged about 67 years, Occupation : Cultivator,
R/o Kurhadi, Tq : Goregaon, Distt. Bhandara,
Presently R/o Asoli, Tq. Gondia,
District - Bhandara

.... **PETITIONER**

// **VERSUS** //

- 1A) Jaiturabai Wd/o Chhaganlal Tandekar,
Aged about 68 Yrs, Occ.- Agriculturist,
R/o Kurhadi, Tq. Goregaon, Distt. Gondia.
- 1B) Smt. Swarawatabai Santosh Hatile,
Aged about 50 Yrs, Occ.- House hold,
R/o Kurhadi, Tq. Goregaon, Distt. Gondia.
- 1C) Smt. Bhagartabai Yograj Binjhlekar,
Aged about 47 Yrs, Occ.- House Hold,
R/o Mahasgaon, Tq. Goregaon, Distt. Gondia.
- 1D) Smt. Surangtabai Charandas Kharole,
Aged about 40 Yrs, Occ.- House Hold,
R/o Sonartoli, Post Telanrodi,
Tq. Goregaon, Distt. Gondia.
- 1E) Jankibai @ Sunita Lalit Khare,
Aged about 30 Yrs, Occ.- Not Known,
R/o Menda, Tq. Dongargrad,
Distt. Rajnandgaon (Chhattisgarh)
(Amendment carried out as per Court's
order dated 20.09.2017)
- 1F) Mukesh Sukhlal Hatile,
Aged about 29 Yrs, Occ.- Not Known,
R/o Binjhali, At Post Salekasa, Distt. Gondia

- 2) Dilip Chhaganlal Tandekar,
Aged about Major, Occ.- Not Known,
R/o Kurhadi, Tq. Goregaon, Distt. Gondia.

.... **RESPONDENTS**

Mr.V.S. Mishra, Adv. for the petitioner
Shri A.N. Vastani, Adv. for respondent Nos.1(a), 1(b) & 2

CORAM : Z.A.HAQ, J.

DATED : 12th July, 2019

ORAL JUDGMENT :

Heard.

- 2] Rule. Rule made returnable forthwith.

3] In the execution proceedings, the respondents (judgment debtors) had filed an application (Exhibit 134) seeking permission to deposit decretal amount of Rs.79,672/-. By order dated 08.02.2016, which is also challenged in this petition, the learned trial Judge allowed the application (Exhibit 134). Then the decree holder filed an application seeking review of the order dated 08.02.2016. As there was delay of one month and 2 days in filing the review application, the petitioner-decree holder had filed an application (Exh. 144), praying for condonation of delay. This application (Exhibit 144) is dismissed by the impugned order dated 14.12.2016.

4] The order dated 08.02.2016 reads as follows :

“ORDER

Say not filed.

Hence application is allowed.”

The above order cannot be sustained and has to be set aside as it is passed without application of mind. The application (Exhibit 134) filed by the judgment debtors could not have been allowed by the Executing Court only because the decree holder failed to give reply to that application.

5] Hence, considering the above facts the following order is passed:

- a) The order passed by the Executing Court on the application (Exhibit 134) on 08.02.2016 is set aside. Consequently, the application filed by the decree holder seeking review of the order dated 08.02.2016 and the application (Exhibit 144) praying for condonation of delay do not survive and are disposed.
- b) The application (Exhibit 134) is restored on the file and the Executing Court is directed to decide the same within two months, on merits.

- c) Rule is made absolute accordingly. In the circumstances, the parties to bear their own costs.

JUDGE

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