

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

WRIT PETITION NO.1100 OF 2018

Madhukar s/o Eknathrao Dalal
Age : 84 years, Occ: Retired,
R/o. Plot No.22 (front portion)
Shahunagar Co-op Housing Society,
Bansilal Nagar, Aurangabad.

... **PETITIONER**
(Orig. Plaintiff)

VERSUS

1. Vilas s/o Gangadhar Dalal
(Describes himself as Vilas s/o Ramchandra Dalal)
Age : 64 yrs, Occu: Retired,
R/o. House No.1-9-1447, Near the House of
Ex-Minister Shri Bhaskarrao Patil-Khatgaokar,
Babanagar, Nanded.
2. Dipak s/o Gangadhar Dalal
Aged : 40 yrs. (appro), Occu : Business
3. Subhash s/o Gangadhar Dalal
Age : 61 yrs. Occ: Government Service
4. Sudheer s/o Gangadhar Dalal
Age : 42 yrs.(appro) Occ: Private Business,
5. Sunil s/o Gangadhar Dalal
Aged : 40 yrs. (appro) Occu : Business
6. Sushila w/o Gangadhar Dalal
Aged : 77 yrs. (appro) Occu : Nil (as per order dated 09.03.18
petition abated against R-6)
All 2 to 6 are R/o. Kapad Bazar, Manvat,
Parbhani. Tq. Manvat Dist. Parbhani.
7. Bebee w/o Vasantrao Kulkarni
Aged : 57 Occu: Household
R/o Holi Area, Nanded.
Tq. and Dist. Nanded.
8. Jayshri Kulkarni
Aged: 44 yrs. Occu : Anganwadi services
R/o Ram Nagar, Aurangabad
Tq. and Dist. Aurangabad. (deleted as per Hon'ble
Court order dated 12.03.2019)
9. Pradeep s/o Vasant Dalal
Age : 60 years Occu: Business
R/o. Dhengali Pimpalgaon, Selu
Tq. Selu. Dist. Parbhani.

... **RESPONDENTS**
(Orig. Defendants)

...
 Advocate for Petitioner : Mr. Nimbalkar Aniruddha A.
 Advocate for Respondent : Mr. S.N. Morampalle
 Advocate for Respondent No.2 : Mr. S.S. Deshmukh
 Advocate for respondent No. 3 : Mr. P.D. Bachate
 Advocate for Respondent No.1 : Mr. A.R. Vaidya
 ...

CORAM : MANGESH S. PATIL, J.

DATE : 14.12.2020

ORAL JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. Learned advocate Mr. A.R. Vaidya waives service for the respondent No.1. With the consent of both the sides, the matter is heard finally at the stage of admission.

2. In a suit filed by the petitioner for declaration and injunction, after the respondent No.1 filed his written statement the petitioner straight away tendered a rejoinder (Exhibit-84). Simultaneously, he filed Application (Exhibit-89) seeking permission to allow him to file the rejoinder. The respondent No.1 opposed such filing of the rejoinder by putting his say to the effect that there was no provision to file such rejoinder. The learned Judge by the impugned common order rejected the Application (Exhibit-89) as well as refused to take on record the rejoinder (Exhibit-84) primarily on the ground that there is no provision in the Code of Civil Procedure to file such a rejoinder.

3. It transpires that the petitioner thereafter sought a review of this order by filing Application (Exhibit-92). The respondent No.1 opposed

the application on the ground that it was not tenable as it did not disclose any ground provided in law enabling the learned Judge to review the order. By order dated 17.11.2017 the learned Judge refused to undertake a review and rejected the Application (Exhibit-92) on the ground that there was no discovery of new fact and there was no formal defect on the face of the record.

4. The learned advocate for the petitioner submits that his Application (Exhibit-89) was rejected merely on the ground that there was no provision and when the provision was brought to the notice of the learned Judge and a review was sought he refused to entertain it. He would submit that based on the peculiar facts and circumstances petitioner was entitled to file subsequent pleadings as contemplated under Order VIII Rule 9 of the Code of Civil Procedure. The application was filed for that purpose and it should have been decided on its own merits.

5. The learned advocate for the respondent No.1 submits that there was no error committed by the learned Judge in refusing to take on record the subsequent pleadings styled as rejoinder. The Application (Exhibit-89) filed by the petitioner was devoid of any ground as would entitle him to come with subsequent pleadings. Since the application was rejected by the learned Judge on the ground that there was no provision, he was also not entitled to subsequently review his order merely because the provision was pointed out to him. The order at the most would be illegal susceptible to a challenge before the higher Court.

6. He would further submit that even if this Court now decides to undertake a fresh hearing on the Application (Exhibit-89), since it does not contain any ground which entitles the petitioner to file subsequent pleadings under Order VIII Rule 9 of the Code of Civil Procedure, the Writ Petition be dismissed.

7. I have carefully gone through the papers and impugned orders. There cannot be any dispute about the fact that the learned Judge did not undertake any scrutiny as to the merits of the request for filing subsequent pleadings and was content in dismissing the Application (Exhibit-89) and refusing to take on record the rejoinder (Exhibit-84) simply on the ground that there was no provision in law. One need only to point out that in the circumstances covered by the Order VIII Rule 9 of the Code of Civil Procedure there could be a subsequent pleading as well. It was therefore expected of the learned Judge to have simultaneously dealt with and made an endeavour to point out if the petitioner could have been allowed to file subsequent pleadings within the frame work of that provision. He has clearly abdicated his jurisdiction.

8. Apart from the above state of affairs, even the learned Judge has refused to undertake a review when the provision was brought to her notice.

9. Considering the peculiar state of affairs, in my considered view the impugned common order on Exhibits 84 and 89 is grossly erroneous and illegal and deserves to be quashed and set aside. It would be appropriate to

call upon the learned Judge to decide the Application Exhibit-89 afresh on its own merits by extending opportunity to both the sides to put up their submissions.

10. The Writ Petition is partly allowed. The impugned order is quashed and set aside. The matter is remanded back to the learned Judge for deciding the Application (Exhibit-89) afresh by extending opportunity to both the sides of being heard.

11. Rule is accordingly made absolute in above terms. Parties to appear before the learned Judge on 13.01.2021 and the learned Judge shall decide the Application (Exhibit-89) as early as possible.

(MANGESH S. PATIL, J.)

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