

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

WRIT PETITION NO. 4969 OF 2021

Kalpita Builders Pvt.Ltd.,Jalgaon,
Through Its Director,
Shri. Darshan s/o Anilkumar Patel,
Age 49 years, Occ. Business,
R/o. Kalpita Enclave CHS,
E-1 Building, Flat No. 1 & 2,
Ground Floor, Sahar Road,
Koldongri, Andheri (East)
Mumbai – 400 069.

... **Petitioner.**

VERSUS

- 1) Pravinkumar Jinabai Patel,
Since deceased represented through
his legal heirs and representatives.
- 1-A) Smt. Savitaben Pravinchand Patel,
Age 66 years, Occ. Business,
R/o. Plot No. 40, 41, Patel Nagar,
Near Collector's Bungalow, Jalgaon,
District Jalgaon.
- 1-B) Sau. Kalpita s/o Dilip Patel,
Age 49 years, Occ. Business,
R/o. Plot No. 40, 41, Patel Nagar,
Near Collector's Bungalow, Jalgaon,
District Jalgaon.
And
Flat No. 773, Takshashila Housing
Society No. 2, Fulchhab Chowk,
Rajkot-360 002 (Gujarat).
- 1-C) Sau. Alpita Jayesh Soni,
Age 47 years, Occ. Business,
R/o. Flat 4, Maple House,
45, Lismore Boulevard,
London- NW-94-EG, United Kingdom
And
Plot No. 40, 41, Patel Nagar,
Near Collector's Bungalow, Jalgaon,
District Jalgaon.

- 1-D) Sau. Trupti Amish Kothari,
Age 45 years, Occ. Business,
R/o. Plot No. 40, 41, Patel Nagar,
Near Collector's Bungalow, Jalgaon,
District Jalgaon.
And
811, Takshashila Housing Society No.2,
Opposite Star Plaza, Fulchhab Press,
Sada, Rajkot- 360 002 (Gujrat)
- 2) Jayshri Jugalkishore Lathi,
Age 58 years, Occ. Household,
R/o. Behind Bombay Lodge,
Navi Peth, Jalgaon, Tq. & Dist.
Jalgaon.
- 3) Sandeep Shivnarayan Zavar,
Age 49 years, Occ. Business,
R/o. Behind Bombay Lodge,
Navi Peth, Jalgaon, Tq. & Dist.
Jalgaon.
- 4) Indumati Omkardas Kabre,
Age 78 years, Occ. Household,
R/o. Dharangaon, Tq. Dharangaon
Dist. Jalgaon.
- 5) Sadhana Bhushan Mundada,
Age 50 years, Occ. Household,
R/o. Pimprala, Tq. & Dist. Jalgaon.
- 6) Ku. Jivanrani Narendra Raison,
Minor, through Sangita Narendra
Raison, R/o. Jaikisanwadi, Jalgaon,
Tq. & Dist. Jalgaon.
- 7) Sulochana Prakash Jain,
Age 58 years, Occ. Household,
R/o. Jaikisanwadi, Jalgaon,
Tq. & Dist. Jalgaon.
- 8) Vimal Shankar Sakhare,
Age 59 years, Occ. Household,
R/o. Plot No. 2, Vrundavan Apartment,
Hareshwarnagar, Jalgaon, Tq. & Dist. Jalgaon.

- 9) Shankar Jagannath Sakhare,
(Deceased) Through his Legal Heirs.
- 9-1) Vimal Shankar Sakhare,
Age 80 years, Occ. Household,
R/o. Plot No. 2, Vrundavan Apartment,
Hareshwarnagar, Jalgaon, Tq. &
Dist. Jalgaon.
- 9-2) Anil Shankar Sakhare,
Age 58 years, Occ. Service.
- 9-3) Sunil Shankar Sakhare,
Age 65 years, Occ. Service.
Nos. 9-2 and 9-3 r/o. Plot No. 1 & 2,
Vrundavan Apartment, B-Building,
Hareshwarnagar, Jalgaon, Tq. &
Dist. Jalgaon.
- 10) Chhaya Prakash Potdar,
Age 51 years, Occ. Household,
R/o. Block No. 6, Vrundavan Apartment,
B-Building, Hareshwarnagar, Jalgaon,
Tq. & Dist. Jalgaon.
- 11) Girnari Rameshwar Agrawal,
Age 63 years, Occ. Household,
R/o. Ground Floor, Vrundavan
Apartment, Hareshwarnagar,
Jalgaon Tq. & Dist. Jalgaon.
- 12) Vinod Rameshwar Agrawal,
Age 64 years, Occ. Business,
R/o. Block No. 3, Vrundavan
Apartment, Hareshwarnagar,
Jalgaon Tq. & Dist. Jalgaon.
- 13) Kantilal Motilal Chajed,
(Deceased) through his L.Rs.
- 13-A) Rajendra Kantilal Chajed,
Age Major, Occ. Business.
- 13-B) Vimal Kantilal Chajed,
age Major, Occ. Business.

- 13-C) Hemant Kantilal Chajed,
Age Major, Occ. Business.
Nos. 13-A to 13-C r/o. Ankita
Bungalow, Ganesh Colony, Jalgaon,
Tq. & Dist. Jalgaon.
- 13-D) Pravin Kantilal Chajed,
Age Major, Occ. Business,
R/o. Sofinco Industries Pvt. Ltd.,
Kaveri Complex, 50, Nungabakkam
High Court Road, Chennai.
- 13-E) Sunita Surendra Tated,
Age Major, Occ. Household,
R/o. Maharashtra Bank, Adnera,
District Amravati.
- 13EE) Sangita Pramod Khivsara,
Age Major, Occ. Household,
R/o. Chandan Apartment, Pratapnagar,
Jalgaon, Tq. & District Jalgaon.
- 13-F) Sadhana Jabarchand Chopda,
Age Major, Occ. Household,
R/o. A.P.R. Colony, Katanga,
Jabalpur (M.P.)
- 14) Hemand Kantilal Chajed,
Age 48 years, Occ. Business,
R/o. Vrundavan Apartment,
B-Wing, 1st Floor, Hareshwarnagar,
Jalgaon Tq. & Dist. Jalgaon.
- 15) Asha Kishor Medhe,
Age 58 years, Occ. Business,
R/o. Vrundavan Apartment,
B-Wing, 1st Floor, Hareshwarnagar,
Jalgaon Tq. & Dist. Jalgaon.
- 16) Shivaji Gangadhar Temkar,
Age 73 years, Occ. Business,
R/o. Vrundavan Apartment,
B-Wing, 2nd Floor, Hareshwarnagar,
Jalgaon Tq. & Dist. Jalgaon.
- 17) Chandramohan Gangadhar Temkar,

Age 58 years, Occ. Business,
R/o. Vrundavan Apartment,
B-Wing, 2nd Floor, Hareshwarnagar,
Jalgaon Tq. & Dist. Jalgaon.

18) Satish Lalji Thakkar,
Age 63 years, Occ. Business,
R/o. Vrundavan Apartment,
B-Wing, 2nd Floor, Hareshwarnagar,
Jalgaon Tq. & Dist. Jalgaon.

19) Purushottam Chhotumal Gujarathi,
Age 63 years, Occ. Business,
R/o. Vrundavan Apartment,
B-Wing, 2nd Floor, Hareshwarnagar,
Jalgaon Tq. & Dist. Jalgaon.

20) Nayana Deepak Patel,
Age 54 years, Occ. Business,
R/o. Plot No. 9, Vrundavan Apartment,
B-Wing, Ring Road, Jalgaon, Tq. &
Dist. Jalgaon.

... Respondents.

...

Advocate for the Petitioners : Mr. V. J. Dixit, Senior Counsel, i/b Mr. Mr.
Sushant V. Dixit.

Advocate for the Respondents No. 1A to 1D : Mr. Bajaj A. S.

Advocate for Respondent Nos. 9(2) to 9(3) to 12, 13(A), 13(C) to 14, 17 to
19 : Mr. Aashish Manglani.

WITH
WRIT PETITION NO. 4987 OF 2021

Shri. Darshan s/o Anilkumar Patel,
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Age 54 years, Occ. Business,
R/o. Plot No. 9, Vrundavan Apartment,
B-Wing, Ring Road, Jalgaon, Tq. &
Dist. Jalgaon.

21) Kalpita Builders Pvt. Ltd. Jalgaon,
Through its Director,
Late Anilkumar Jinabhai Patel.

22) Anilkumar Jinabhai Patel,
Since deceased through L.Rs.

22-A) Smt. Geetaben w/o Anilkumar Patel,
Age 70 years, Occ. Household.

22-B) Shri. Darshan s/o. Anilkumar Patel,
Age 49 years, Occ. Business.

22-C) Shri. Chetan Anilkumar Patel,
Age 47 years, Occ. Business.

22-D) Shri. Vikram Anilkumar Patel,
Age 45 years, Occ. Business.
All R/o. 180/1, Smruti, Gujrati
Galli, Zilla Peth, Jalgaon.

... Respondents.

...

Advocate for the Petitioners : Mr. V. J. Dixit, Senior Counsel, i/b Mr. Mr.
Sushant V. Dixit.

Advocate for the Respondents No. 1A to 1D : Mr. Bajaj A. S.
Advocate for Respondent Nos. 9(2) to 9(3) to 12, 13(A), 13(C) to 14, 17 to
19 : Mr. Aashish Manglani.

CORAM : MANGESH S. PATIL, J.

DATE : 09.08.2021.

ORAL JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith in both the Writ Petitions. With the consent of all the contesting parties, the matters are heard finally at the stage of admission.

2. These Writ Petitions arise out of the orders passed by the Appellate Court turning down the request of the petitioners to segregate the issues to be decided depending upon the scope and ambit of the provisions of Section 430 of the Companies Act 2013 which was brought into the statute book in

the year 2016, after filing of the Appeals. By filing separate applications under Order 41 Rule 25 read with Section 151 of the Code of Criminal Procedure they requested the Appellate Court to segregate such issues which need to be dealt with by the National Company Law Tribunal (hereinafter 'NCLT') and the others which can be decided in the Appeal being a Civil Court. By the impugned orders, the request of the petitioners was turned down.

3. The learned Senior Advocate Mr. Dixit refers to the observations of the Supreme Court in Special Leave Petition (Civil)Diary No. 9209/2020 with following observations in paragraph No. 3 and 4 :

“3. However, Mr. Salim Inamdar, learned counsel appearing on behalf of the petitioner has sought a limited clarification to the effect that the present order will not come in the way of the petitioner adopting suitable remedies under the provisions of the Companies Act 2013 in respect of a dispute which falls within the purview of that enactment and within the jurisdiction of the fora created under it.

4. We clarify that while we are in agreement with the impugned judgment of the High Court, if there are any independent grievances falling within the purview of the Companies Act 2013, the petitioner will be at liberty to follow the appropriate remedy in accordance with law. The District Judge is requested to ensure the expeditious disposal of the First Appeals, RCA Nos. 153 and 154, on or before 31.08.2021.”

Mr. Dixit would submit that though the appellants intend to prosecute the appeals in place of the original plaintiff or in the capacity of the directors of the plaintiff-Company, it is in their interest to get the issue regarding jurisdiction to be decided. He would point out that simultaneously with the provision of Section 430 of Companies Act even Section 432 was inserted whereby even the pending proceedings which can be decided by the NCLT

have to be transferred and decided by the NCLT. Therefore, irrespective of the objection to the jurisdiction being raised by the respondents/defendants, it would be in the interest of the petitioners to get that issue decided at the hands of the First Appellate Court

4. Learned Senior Advocate would pertinently point out the observations of the Supreme Court in paragraph No. 4 (supra) granting liberty to follow the appropriate remedy in accordance with law.

5. Per contra, the learned advocate Mr. Bajaj would refer to and point out that in paragraph No. 2 the Supreme Court has upheld the observations and conclusions of the High Court, in following words :

“2 There is no error in the finding that the suit which was filed for a declaration in regard to the invalidity of the sale deeds was properly instituted before the civil court and there was no occasion to transfer the appeal to the National Company Law Tribunal. Section 430 of the Companies Act 2013 bars the jurisdiction of a civil court to entertain a suit or proceeding in respect of any matter which the tribunal or the appellate tribunal is empowered to determine under the Act or any other law for the time being in force. The jurisdiction to decide the validity of a sale deed would fall within the ambit of the civil court. Hence, we are in agreement with the impugned order of the High Court dated 5 February 2020”.

He would, therefore, submit that since the earlier decision of this Court has reached finality, the petitioners are not entitled to agitate the issues once again before the First Appellate Court.

6. After having considered the rival submissions and perusal of the order of the Supreme Court, the impugned orders, the order passed by this Court in the earlier round of litigation and the provisions of the Companies Act particularly inserted by the amendment of the year 2016 it transpires that the dispute boils down to the interpretation of the order of the Supreme

Court particularly in the light of the liberty granted to the petitioners. In my considered view, this being a Writ Petition, it would not be appropriate for this Court to decide the issues which can be raised and decided in the First Appeals before the District Court. Needless to state that the parties are at liberty to put their own interpretation to the directions and the observations of the Supreme Court and satisfy the learned Judge of the Appellate Court.

7. The point to be borne in mind is that though the petitioners are intending to prosecute the Appeals as the original plaintiffs, by virtue of provision of Section 432 of Companies Act, one can easily comprehend the anxiety being expressed on their behalf as to if even the entire Appeals or only a part thereof will have to be transferred to the NCLT pursuant to the mandate of Section 430 and 432 of the Companies Act. It would therefore be in the fitness of things and appropriate that the Appellate Court is allowed to decide the Appeals including the issue as to the scope and interpretation of the liberty granted by the Supreme Court in the order passed in Special Leave Petition (Civil) Diary No.9209/2020.

8. Therefore, with the observations that the Appellate Court may now decide the Appeals expeditiously and with the hope that the parties would cooperate the Appellate Court in obedience to the direction of the Supreme Court. It may now allow the parties to argue even on the point of interpretation of the order of the Supreme Court as far as liberty granted to the petitioners along with the provisions of Sections 430 and 432 of the Companies Act and decide the Appeals finally in accordance with law.

9. Rule is accordingly made absolute.

10. The Writ Petitions are disposed of.

(MANGESH S. PATIL, J.)

mkd/-