

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4085 OF 2019

Haribhau s/o Narayanrao Nandkhedkar
Died – through His L.Rs.

1. Suvarna w/o Haribhau Nandkhedkar,
Age : 58 years, Occu. Household,
R/o Ramkrishna Nagar,
Near Vasantao Naik Statue,
Wasmath Road, Parbhani,
Tq. and District Parbhani
 2. Vaibhav s/o Haribhau Nandkhedkar,
Age : 37 years, Occu. Business,
R/o Ramkrishna Nagar,
Near Vasantao Naik Statue,
Wasmath Road, Parbhani,
Tq. and District Parbhani
 3. Sou. Supriya w/o Sujit Kumbhar,
Age : 32 years, Occu. Household,
R/o Beside Shahnoormiya Dargah,
Aurangabad, District Aurangabad
- (Petitioner Nos.1 and 3 through
GPA Holder of Petitioner No.2)

PETITIONERS
(Orig. Defendant
Nos.1/1 to 1/4

VERSUS

1. Sandeep s/o Balasaheb Wakle,
Age : 30 years, Occu. Agri.,
R/o Godawari Colony, Gangakhed,
Tq. Gangakhed, Dist. Parbhani
2. Vivek s/o Devikantrao Deshmukh,
Age : 38 years, Occu. Architect,
R/o Lokmanya Nagar, Parbhani,
Tq. and District Parbhani

3. Vishal s/o Manoharrao Budhwant,
Age : 40 years, Occu. Contractor,
R/o Shivram Nagar, Parbhani,
Tq. and District Parbhani

4. Vijaya d/o Haribhau Nandkhedkar,
Age : 27 years, Occu. Education,
R/o Ramkrishna Nagar,
Near Vasantrya Naik Statue,
Wasmath Road, Parbhani,
Tq. and District Parbhani

RESPONDENTS

(Respdts.No.1/Orig. Plaintiff
and Defendant Nos.2 and 3)

Mr. Pravin N. Kalani, Advocate for the petitioners

Mr. N.D. Kendre, Advocate for respondent No.1

Mr. S.G. Jadhavar, Advocate for respondent No.3

CORAM : MANGESH S. PATIL, J.

DATE : 06.01.2021

ORAL JUDGMENT :

Heard.

2. Rule. The Rule is made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.

3. The petitioners are the original defendant Nos.1/1 to 1/ 4 in Special Civil Suit No.22/2014, who submitted an application (Exh-196) requesting to set aside the order passed by the Court directing the suit to proceed ex parte against them, for their failure to appear inspite of service of summons.

4. According to the petitioners, they were not at all served with summons and it is only after getting knowledge about filing of the suit that they appeared and preferred the application (Exh-196).

5. The learned Advocate for respondent No.1, who is the original plaintiff, submits that the application (Exh-196) was sans any reason for not putting the appearance inspite of service of summons. The learned Judge has specifically observed that the summons were duly served to these petitioners. No error is committed by the learned Judge in rejecting the application (Exh-196) in the facts and circumstances.

6. It is trite that the procedure is a handmaid of justice. When the petitioners for whatever reason had not appeared inspite of service of summons but wanted to put their appearance belatedly, the interest of justice would have been sub-served by allowing them to put their appearance, may be by fastening with liability to pay some costs for causing delay. The approach of the learned Judge while passing the impugned order is pedantic rather than pragmatic. It is only on the technical reasons that the learned Judge seems to have refused to exercise the discretion.

7. There is no material to demonstrate and even the impugned order does not specifically mention as to how any prejudice is likely to be caused to respondent No.1/plaintiff if the petitioners are allowed to appear.

8. It is in these circumstances, when the dispute pertains to specific performance of a contract regarding an immovable property, the petitioners' request ought to have been considered favourably.

9. The Writ Petition is allowed. The impugned order is quashed and set aside. The learned Civil Judge shall now allow the petitioners to appear in the suit on their depositing a cost of Rs.5000/- within two weeks from today. The Rule is made absolute.

[MANGESH S. PATIL]
JUDGE

npj/WP4085-2019