

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

WRIT PETITION NO. 2869 OF 2016

Navnath Dhondiba Jadhav .. Petitioner

Versus

Kalyan Janardhan Patil and others .. Respondents

Shri S. P. Salgar, Advocate h/f Shri Anirudha H. Mahajan,
Advocate for the Petitioner.

Shri Jayant R. Patil, Advocate for the Respondent No. 1.
The Respondent Nos. 2 to 9 are served.

**CORAM : SHAILESH P. BRAHME, JJ.
DATE : 03RD NOVEMBER, 2023.**

FINAL ORDER :

. Heard the learned counsel for both the sides. The petitioner is the original defendant No. 5. The respondent No. 1 is original plaintiff. The respondent No. 1 had filed R.C.S. No. 784 of 1987 for declaration, possession and *mesne profit*. It was contested by the petitioner and other defendants. It was decreed partly on 29.04.1992 to the extent of declaration and possession. For the relief of *mesne profit* a separate enquiry was directed to be conducted.

2. In pursuance of the decree passed, the respondent No. 1 preferred Misc. Civil Application No. 70 of 1993 for *mesne profit*. Notices were issued to the petitioner and other contesting parties and they were served. They failed to file say. Therefore, matter

proceeded without their written statement. Even they failed to conduct cross examination of the respondent No. 1. On 09.10.2014, the petitioner submitted Exhibit 52 praying for setting aside no say order passed. By order dated 14.09.2015 his application is rejected. Being aggrieved present petition is filed.

3. The learned counsel for the petitioner submits that he has good case on merits and an opportunity is required to be given to him to contest Misc. Civil Application No. 70 of 1993. He further states that he could not receive relevant documents. There was no oblique motive on his part for not filing say in time. It is further submitted that the possession of the suit land has been handed over to the respondent No. 1 on 06.09.2013. Therefore, he is not liable for *mesne profit*.

4. The learned counsel for the respondent No. 1 repealed the submissions of the petitioner. He has pointed out that the application is vague and it is being filed only by the defendant No. 5. The approach of the petitioner throughout has been very cavalier. Even the present writ petition has not been prosecuted diligently. It is further submitted that the petitioner and other respondents were aware of the proceedings for *mense profit*. They were represented by lawyer. Their application is rightly rejected by the Trial Court.

5. The application Exhibit 52 is submitted by the petitioner on 09.10.2014. The application is lacking material particulars.

The learned counsel for the petitioner is unable to point out the date on which no say order was passed. Pertinently, the petitioner and supporting respondents have been represented by lawyer. They had entered their appearance on 04.09.1993.

6. After 04.09.1993 no attempt was made to prosecute the matter diligently. Even on 14.08.2014 cross examination was not conducted and the right to cross examination of the petitioner is forfeited. The present petition is filed on 18.02.2016. On 28.09.2017 conditional order was passed for removing objections. Matter was dismissed in default. An application for restoration was filed and it was allowed on 01.09.2023. The present petition has also not been prosecuted diligently.

7. The learned counsel Mr. Jayant R. Patil appearing for the respondent No. 1 is right in submitting that the petitioner is casual. The learned Trial Judge is justified in rejecting the application Exhibit 52. An inference can be drawn that the petitioner and other respondents are aware of Misc. Civil Application No. 70 of 1993. They could challenge the decree passed in original suit before the District Court. Thereafter they could challenge interim orders passed in execution in High Court unsuccessfully. No diligence has been exhibited for taking steps in Misc. Civil Application No. 70 of 1993.

8. I find that for the reasons stated above, no case is made out

by the petitioner for exercising discretionary jurisdiction. The writ petition is dismissed. There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]

bsb/Nov. 23