

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

WRIT PETITION NO. 13786 OF 2023

- |        |                                                                             |                |
|--------|-----------------------------------------------------------------------------|----------------|
| 1.     | Nandranibai Harinarayan Jaiswal<br>Died through L.Rs.                       |                |
| a)     | Smt. Padmabai Shivnarayan Jaiswal                                           |                |
| b)     | Smt. Kanchanbai Badriprasad Jaiswal                                         |                |
| c)     | Smt. Nutan Rajesh Jaiswal                                                   | ...Petitioners |
| Versus |                                                                             |                |
| 1.     | GTL Limited through its Manager<br>Old powerhouse, Mill Corner, Aurangabad. |                |
| 2.     | Deputy Engineer<br>GTL Main Powerhouse Paithan Gate<br>Aurangabad.          |                |
| 3.     | Dilip Shivnarayan Jaiswal                                                   | ...Respondents |

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Advocate for Petitioners : Mr. Kulkarni Dattatray K.

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**CORAM : SHAILESH P. BRAHME, J.**

**DATE : 1<sup>st</sup> NOVEMBER 2023**

**PER COURT :**

. Heard learned Counsel for the petitioners.

1. The petitioners are challenging the order dated 19.07.2021 passed below Exhibit-51 as well as order dated 12.01.2023 below Exhibit-61 in Regular Civil Suit No.602/2014. The petitioners are the plaintiffs prosecuting suit for injunction.

2. The controversy involved in the suit is that the petitioners claim to be the owners of the property. The respondent no.1 and 2 are the

authorities who are responsible for supplying electricity connection to the subjects. There are disputes amongst the petitioners and others including the respondent no.3. The respondent no.1 and 2 should not supply electricity connection, is the relief claimed in the suit.

3. The petitioners filed application (Exhibit-49) seeking direction to the respondent no.1 and 2 to produce on record certain documents. Thereafter application (Exhibit-50) was submitted by the respondent no.3 to prepone the date. An order was passed on 12.02.2020 below Exhibit-50 calling upon the authorities to submit status report. For the non-compliance of the order, application Exhibit-51 is submitted by the petitioners under Order 39 Rule 11 (High Court Amendment) of the Civil Procedure Court. Though no reply was filed to this application, by the impugned order, it was rejected. Thereafter application (Exhibit-61) was filed to recall the order dated 19.07.2021. The same is also rejected.

4. The learned Counsel for the petitioners submits that there is a non-compliance of the order by the respondent no.1 and 2 and therefore recourse should have been taken to Order 39 Rule 11. He further submits that considering the written statement, the status report and relevant documents which are in exclusive custody of respondent no.1 and 2 are necessary for the petitioners to proceed further with the suit. The documents are necessary to effectively prosecute the suit. He therefore submits that the impugned orders are perverse.

5. Order 39 Rule 11 of CPC contemplates altogether different situation. It is a drastic step to be taken by the Court against recalcitrant party who acts in defiance of the orders of the Court. I do not see in the present matter such a situation has arisen. Just because respondent no.1 and 2 failed to submit status report, doesn't mean that their defiance is liable to be struck out.

6. The learned trial Judge has rightly held in paragraph no.6 that recourse to Order 39 Rule 11 cannot be taken at that juncture of the proceeding. It is rightly recorded that striking out defense is a drastic step to be resorted to as a last remedy. I do not see any perversity or illegality in the impugned orders.

7. The order passed below Exhibit-61 is also in consonance with the provision of law. There is no perversity or illegality in rejecting application (Exhibit-61). The learned Judge has taken into account relevant provisions. Hence I am not prepared to interfere in the said order. There is no merit in the writ petition. Thus it is dismissed.

**[ SHAILESH P. BRAHME, J.]**