

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

SECOND APPEAL NO.182 OF 2021
WITH
CIVIL APPLICATION NO.4637 OF 2021
IN SA/182/2021

Bhaskar Maruti Talole,
Being deceased, through his Legal heirs,

1. Nanda Bhaskar Talole, Age 66 years,
2. Nitin Bhaskar Talole, Age 46 years,
3. Uttam Bhaskar Talole, Age 41 years,
Occupation of No.1 to 3 – Agriculture,
All R/o Nimgaon Jali, Tal. Sangamner,
Dist. Ahmednagar. **... Appellants.**

Versus

1. Ashok Maruti Talole, Age 53 years,
2. Anna Maruti Talole, Age 64 years,
R/o Sonewadi, Tq. & Dist. A'nagar.
3. Balasaheb Maruti Talole, Age 49 years,
4. Yashwant Raosaheb Talole, Age 38 years,
5. Shakuntala Raosaheb Talole, Age 61 years,
6. Alka Vilasrao Phatangare, Age 41 years,
7. Sunita Popat Nirgude, Age 43 years,
R/o Pimpalas, Tq. Rahata,
District Ahmednagar.
8. Meena Raosaheb Talole, Age 37 years,
R/o Ozar (Kd), Tq. Sangamner,
District Ahmednagar.
9. Yamunabai Maruti Talole – *Deleted*.
10. Anjanabai Chandrabhan Sarbande,
Age 57 years, R/o Umbri-Balapur,
Tq. Sangamner, District Ahmednagar.
11. Shakuntala Damodar Dighe,
Age 54 years, R/o Dhok-Nandur,
Tq. Vaijapur, District Aurangabad.
12. Mangal Shaligram Chaudhari,
Age 47 years, R/o Nandurkhi,
Tq. Rahata, Dist. Ahmednagar.

13. Ganesh Ashok Thete, Age 20 years,
R/o 1, 3, 4, 5, 6, 9, 13 are R/o Nimgaon Jali,
Tq. Sangamner, Dist. Ahmednagar.
Occupation of R.1 to 13 is Agriculture. ... **Respondents.**

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Advocate for Applicant : Mr. Bhide Vinod Y.
Advocate for respective Respondents : Mr. S. K. Shinde.

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CORAM : S. G. MEHARE, J.
DATE : 15.09.2023

ORAL JUDGMENT :-

1. The learned counsels for the parties have finally been heard at the admission stage.

2. Admit.

3. It is an admitted fact that defendant No.2 initially appeared in person and filed a written statement. Then, he engaged a lawyer to represent him. His lawyer filed his Vakalatnama on 05.01.2007, Exh.54. The lawyer representing him has filed the letters addressed to him. He has also filed a pursis before the Trial Court that he may be discharged as the present appellants were not instructing and responding to him. He did this four times. But, the suit proceeded ahead.

4. Learned counsel for the appellants would submit that once the lawyer withdrew his power, it was the duty of the

Court to issue notice to the party on the Court motion. But, instead of issuing the notice, the trial Court was calling the lawyer again, who had already requested to discharge him. The test for substantial question of law that whether the substantial question of law directly or substantially affects the right of the parties would apply in this case. Therefore, the following substantial question of law has been formulated.

A. Can the Court proceed with the suit where the lawyer appearing for the party intimates to the Court that even after the written notice, the party is not responding to him and prayed to discharge him ?

5. Learned counsel for the contesting respondents has vehemently submitted that the Court had called the lawyer of the present appellant/defendant No.2 from time to time. He appeared in the matter. The present appellant deliberately remained absent. His conduct may be noted. The suit was filed in the year 2000. There is already a long journey of litigation. All the issues which were raised before the Court, including the defence of the present appellant, have been elaborately discussed. It would be an injustice for the plaintiffs to begin the journey again from the beginning. The learned District Judge has assigned the proper and correct reasons. The Court

correctly disbelieved the present appellants and dismissed the appeal.

6. It is an admitted fact that after filing the discharge pursis by the lawyer appearing for the present appellant, the Court did not issue notice to the present appellant/defendant No.2 through Court.

7. Order III Rule 4 of the Civil Procedure Code is about the appointment of a pleader. It has been provided in sub-rule 1 that no pleader shall act for any person in Court unless he has been appointed for the purpose. Sub-rule 2 provides that such appointment shall deemed to be in force until with the leave of the Court by writing signed by the client or the pleader, as the case may be, and filed in the Court or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

8. The above provision is that the appointment of the pleader in a suit may get his appearance determined with the leave of the Court in writing. Same rule applies when the client does not wish to continue the pleader he has engaged. A pleader has to send a registered letter with acknowledgment due to the client who engaged him, intimating him the next

date before getting his appearance determined and then submit the same to the Court, along with the prayer for his discharge. Then, the Court has to determine the appearance of a pleader. Thereafter, the Court has to send a notice to the party if he does not appear on the given date by his pleader at the Court's motion.

9. The appellant has a case that he could not get knowledge of the dates fixed by the Court. It appears that the appellant tried to raise a doubt against a pleader whether he took care of serving the appellant with a registered notice before getting his appearance determined with the leave of the Court. However, the record reveals that the pursis praying to determine the appearance with leave of the Court were placed on the record. In such a situation, the Court was supposed to verify the facts by issuing the notice to the appellant at the Court's motion. But, it was unfortunately not done, and the Court proceeded with the suit. The Court denied the present appellant a right to contest the suit. In these facts, it would be difficult to accept the argument of the learned counsel for the respondent/original plaintiff that the suit was correctly proceeded *ex-parte*, and there will be injustice if the appeal is allowed. He may be emotionally correct because it was a long

journey of litigation for about 23 years. But, the defendant can not be denied a right to contest the suit. Hence, the Court is of the view that the Court Court was wrong to proceed with the suit without issuing a notice to the appellant on the Court's motion, and it cannot be said that it was an *ex-parte* decree. However, it was a decree passed in the absence of the contesting appellant. Due to the impugned Judgment and Decree, the appellant's right has been directly and substantially affected. Accordingly, the substantial question of law is answered in negative.

10. The Second Appeal is allowed.

11. The impugned judgment and decree passed against this contesting defendant No.2 is quashed and set aside.

12. The learned Trial Court is directed to decide the suit within three months from the date of appearance of the parties by granting the opportunity to the appellant to contest the suit. If the circumstances permit, the plaintiff may also be granted an opportunity to lead the additional evidence.

13. Both parties shall appear before the Trial Court on 30.09.2023.

14. The present appellant/defendant No.2 shall not seek adjournment in any event unless beyond his control at any cost and never try to protract the trial. If he does not cooperate with the Court to decide the matter within three (3) months as directed, the Trial Court shall pass appropriate orders.

15. Rule made absolute.

16. In view of the disposal of the Second Appeal, nothing survives in the Civil Application. Hence, the Civil Application is disposed of accordingly.

17. Record and Proceedings be returned to the concerned Court.

(S. G. MEHARE, J.)

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