

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.639 OF 2020

Chandrabhagai Narsinha Lonkar & Ors. Petitioners

versus

M/s. Rajesh Builders & Ors. Respondents

.....

- Mr. Yash Dewal i/b. S. S. Kanetkar, Advocate for Petitioner.
- Mr. Ravi Kadam, Senior Advocate a/w Hrishikesh Chavan a/w Rohan Sawant a/w Praveen Kamble a/w Mohan B. Jadhav, Advocate for Respondent No.1.
- Mr. Vipul J. Shah i/b. L. C. Tolat & Co. Advocate for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 05th APRIL 2023**

P.C. :

1. Heard Mr. Yash Dewal, learned counsel for the Petitioners, Mr. Ravi Kadam, learned Senior Counsel for the Respondent No.1 and learned counsel Mr. Vipul J. Shah, for Respondent No.2.

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2. The Petitioners have challenged the order dated

17/01/2018 passed by the 8th Joint Civil Judge, Senior Division, Pune, below Ex.178 in Special Civil Suit No.316/1999. By the impugned order, the learned Trial Judge allowed the application filed under Order VI Rule 17 of CPC preferred by the Original Plaintiff who is the Respondent No.1 herein.

3. The impugned order mentions that the original Defendant No.11 and 12 had failed to file any say. It was specifically observed that the application proceeded without their say. Importantly, it was observed that the Defendant Nos.1 to 10 had lost interest in the present matter. The present Petitioners are the Defendant Nos.1 to 10. Therefore, it is quite clear that the learned Trial Judge proceeded to decide that application without any notice to the Petitioners i.e. the original Defendant Nos.1 to 10. The Petitioners have taken specific ground in their Petition in paragraph No.24 that a copy of the application below Ex.178 on which the impugned order was passed was never served upon the Petitioners though they were parties in the said suit. Their grievance is justified. The learned

Judge has not given any reason as to why he had observed that the Defendant Nos.1 to 10 had lost interest in the present matter.

4. In this view of the matter, the impugned order is unsustainable and hence is set aside. The application below Ex.178 in Special Civil Suit No.316/1999 is remanded back on the file of 8th Joint Civil Judge, Senior Division, Pune. The application shall be heard afresh after giving sufficient opportunity to all the parties.
5. The parties shall appear before the Trial Court on 27/04/2023.
6. With these observations, the Petition is disposed of.

(SARANG V. KOTWAL, J.)