

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7734 OF 2011

Antu Kuber Halunde

...Petitioner

Versus

Mangal Phanchu Halude & Ors.

...Respondent.

Mr. Bhushan Walimbe for the Petitioner.

Mr. T. S. Ingale for Respondent Nos. 1 & 2.

Coram : Sharmila U. Deshmukh, J.

Date : July 19, 2023.

P. C. :

1. Heard.
2. The challenge in the Petition is to the order dated 17th March, 2011 rejecting the Petitioner's Application for setting aside the order of dismissal as against the unserved Defendant No. 3b to 3e.
3. Learned counsel appearing for the Petitioner points out that during the pendency of the proceeding, the Original Defendant had expired and the legal heirs i.e. Defendant Nos. 3a to 3e were sought to be brought on record. He would further submit that Defendant No. 3a was

duly served. However in spite of due diligence Defendant Nos. 3b to 3e could not be served and as such, in the year 2007 the order came to be passed dismissing the suit as against the unserved Defendant Nos. 3b to 3e.

4. It appears from the record that the suit is of the year 1993 and has yet to attain finality. Since the year 2004, the petitioner has been unable to serve the Respondent-Defendant Nos. 3b to 3e. The impugned order of the year 2011 records that numerous opportunities were given to the Petitioner-Plaintiff to serve the unserved Respondents. However, the Petitioner has not taken any steps in that regard.

4. Considering the proceedings, are of the year 1993, the Trial Court has passed the impugned order rejecting the Application below Exhibit-63. The fact remains that the suit of the year 1993 has not yet attained finality against the established norm that speedy trial is the backbone of the judicial system.

5. The Application which has been filed below Exhibit-63 does not state the reasons as to why the unserved Respondents -Defendants could not be served and as regarding that the steps which were taken to ensure that service was rejected. It is also on record that numerous opportunities were given to the Petitioner-Plaintiff, however, he has not taken any steps.

In view of the findings of the Trial Court as regards the conduct of the Petitioner-Plaintiff, in my opinion, the proceeding of the year 1993 cannot be stalled once again for permitting the Petitioner to take steps for serving the unserved Respondents.

6. In view of the above, there is no merit in the Writ Petition. The Writ Petition stand dismissed.

[Sharmila U. Deshmukh, J.]