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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2833 OF 2021

1. **MANILAL MULCHAND SHAH**,
an adult Inhabitant of Mumbai, age 76
years, Occupation Business, residing at
10, Tej Chhaya, Road No.6,
Mamaletdar Wadi, Malad (West),
Mumbai 400 064.
2. **HASMUKH MULCHAND SHAH**,
an adult Indian Inhabitant of Mumbai,
age 70 years, Occupation Business,
residing at 9, Tej Chhaya, Road No.6,
Mamaletdar Wadi, Malad (W),
Mumbai 400 064.
3. **LEELAVATI JAYANTILAL SHAH**,
an adult Indian Inhabitant of Mumbai,
age 75 years, Occupation Housewife,
residing at B-204, Suraj Apartment, SV
Road, Opp NL High School, Malad
(W), Mumbai 400 064.
4. **PRAMOD POPATLAL SHAH**,
an adult Indian Inhabitant of Mumbai,
age 68 years, Occupation Business,
residing at 306, Maharaja Apartments,
Opp Malad Telephone Exchange, SV
Road, Malad (West), Mumbai 400 064.
5. **SARLA PRADEEP SHAH**,
an adult Indian Inhabitant of Mumbai,

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age 66 years, Occupation Housewife,
residing at 54, Vijay Apartment,
Daruwala Compound, Off SV Road,
Malad (West), Mumbai 400 064.

6. **SUNIL POPATLAL SHAH**,
an adult Indian Inhabitant of Mumbai,
age 52 years, Occupation Business,
residing at 201/202, Somaiya Shopping
Centre, 2nd floor, Sainath Road, Malad
(West), Mumbai 400 064.
7. **M/S SWASTIK INDUSTRIES**,
a Partnership Firm registered under
Partnership Act, 1932, having its
registered address at C/o ICT
Industries, Swastik Compound,
Chincholi Bunder Road, Ram Baugh,
Malad (West), Mumbai 400 064,
through its Partner and Authorized
Signatory Mr Manilal Mulchand Shah.

... PETITIONERS

~ VERSUS ~

1. **THE STATE OF MAHARASHTRA**,
through the Law and Judiciary
Department, Government of
Maharashtra, having its office at
Mantralaya, Mumbai 400 032, and
represented through the Learned
Government Pleader, High Court
(Original Side), Bombay.
2. **REGISTRAR OF FIRMS (CO-
OPERATIVE SOCIETIES)**,
having its office at New Administrative
Building, 6th floor, Government
Colony, Bandra (East), Mumbai 400
051.

3. **RANJANBEN JITENDRA SHAH**,
an adult Indian Inhabitant of Mumbai,
aged about 70 years, Occupation :
Business, residing at 6, Tej Chhaya,
Road No.6, Mamlatdar Wadi, Malad
(West), Mumbai 400 064.
4. **JHAVERCHAND HIRJI SHAH**,
An adult Indian Inhabitant of Mumbai,
aged about 68 years, Occupation:
Business, residing at Hetal Arch, 6th
Floor, Flat No.603, Above Union Bank
of India, SV Road, Opposite Natraj
Market, Malad (West), Mumbai 400
064.

... RESPONDENTS

APPEARANCES

FOR THE PETITIONER	Mr Anand Pande , <i>with Ashok R Pande.</i>
FOR RESPONDENTS NOS. 1 & 2	Mr Milind More , <i>Addl GP, with Himanshu Takke, AGP.</i>
FOR RESPONDENTS NOS. 3 & 4	Mr Dishang Shah , <i>with Hetta Sagar, i/b Piyush Shah.</i>

**CORAM : G.S.Patel &
Neela Gokhale, JJ.**

DATED : 27th February 2023

ORAL JUDGMENT (Per GS Patel J):-

1. Heard. The Petition is really a dispute between partners. The 7th Respondent is the partnership firm. Petitioners Nos. 1 to 6 are

opposed to the 3rd and 4th Respondent. Very shortly stated, the Petitioners claim that the 3rd Respondent “compulsorily retired” or was expelled from the 7th Petitioner partnership firm. According to the Petitioners, the Petitioners Nos. 1 to 6 are therefore entitled in law to carry on the business of the firm without requiring either the signature or the assent of the 3rd Respondent on documents submitted to the 2nd Respondent, the Registrar of Firms. The 3rd Respondent has not accepted this so-called retirement or expulsion. There is a suit pending on the Original Side of this Court.

2. Even before that the 3rd Respondent had filed an SC Suit No. 1329 of 2011 in the City Civil Court at Dindoshi in which she sought a declaration that she continued as a partner of the firm. The suit filed by the 3rd Respondent in the High Court is Suit No. 461 of 2019. Here, the Petitioner has sought a declaration that she has a 10% right, share, interest and entitlement in the partnership firm and its assets. The 3rd Respondent has withdrawn the City Civil Court suit. The Petitioners argue that on that withdrawal, the Original Side Suit in this Court will not lie. That is not a matter for the Writ Court to consider. Obviously, those contentions will be considered in the High Court Suit itself. The 3rd Respondent argues that implicit in her prayer in the High Court Suit for a 10% share in the firm is a declaration that she is a partner of the firm, and that it is because of her continued partnership that she is entitled to this 10%. It is also submitted that a specific declaration need not be sought. We express no opinion on these rival contentions. We merely note them.

3. We do so because the frame of the Petition as reflected in prayer clauses (a), (b) and (c) is clearly to enforce that retirement or expulsion. The three prayers read as follows:

“(a) That, records and proceedings of the Petitioners for Reconstruction of the Partnership firm being Form No. E submitted on 22.01.2016 and also records and proceedings of the hearing of the third Impugned Order dated 24.08.2021 be called and legality and validity of the Third Impugned Order dated 24.08.2021 passed by the Respondent No.2 be examined.

(b) That, Third Impugned Order dated 24.08.2021 passed by the Respondent No.2 thereby rejecting the application of the Petitioners i.e. Form No. E dated 22.01.2016, be set aside and quashed.

(c) That, this Honourable Court under Article 226 of the Constitution of India be please to issue Writ of Mandamus or any appropriate Writ or Order or directions to the Respondent No.2 to accept the application of the Petitioners i.e. Form-E dated 22.01.2016 for retirement of the partners i.e. Respondent Nos. 3 and 4 and delete the names of the Respondent Nos. 3 and 4 as the Partners from the Partnership Firm of the Petitioner No.7 i.e. M/s Swastik Industries from the Register and all the Records.”

4. The 2nd Respondent, the Registrar of Firms, has been apprised of these disputes between partners of the firm. He has therefore insisted that the signature or the no objection of the 3rd Respondent is required on a Form No. E submitted on 22nd January 2016. He has also passed an order on 24th August 2021 essentially declining to accept the unilateral statement or submission by

Petitioners Nos. 1 to 6 without the consent, assent or no objection certificate of the 3rd Respondent.

5. It is not for the Registrar of Firms to decide partnership disputes. If he was to accept the submission of the Petitioners, it would result in an acceptance of the Petitioners' case that the 3rd Respondent has been validly and properly expelled or is deemed to have retired from the partnership firm. That is evidently a matter that is still pending before a Civil Court.

6. We are told that the property in question is extremely large and is of high value. It is almost entirely occupied by the commercial occupants. These are matters that do not concern us.

7. We are unable to discern any infirmity in the actions of the 2nd Respondent or in the impugned order.

8. The Writ Petition is without merit. It is rejected. There will be no order as to costs.

(Neela Gokhale, J)

(G. S. Patel, J)