



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO.3711 OF 2023

1. Digambar Pundlikrao Thakare,
Aged about 80 yrs., Occ. Retired,
2. Smt. Varsha W/o. Ajay Gawhad,
Aged about 51 yrs., Occ: Housewife,
3. Dr. Nilesh S/o. Digambar Thakare,
Aged about 47 yrs., Occ. Medical
Practitioner.
4. Nishant S/o. Digambar Thakare,
Aged about 44 yrs., Occ. Business
All R/o. C/o. Digambar S/o. Pundlikrao
Thakare, Plot No.17, Ring Road, Ganesh
Colony, Rana Pratap Nagar, Nagpur.

.... **PETITIONERS.**

// **VERSUS** //

1. Smt. Ashalata W/o. Digamber Thakre,
(Now Deceased)
2. Ashok S/o. Gangadhar Shrirao,
Aged about 64 years, doing business
in the name and style of Ashok Steel
and Hardware, Shop Nos. 2 and 3,
'Venkatgiri', Plot No.17, Ganesh
Colony, Pratap Nagar, Nagpur and
R/o. Plot No.15, Navnirman Society,
Pratap Nagar, Nagpur.

.... **RESPONDENTS.**

Shri R.M.Sharma, Advocate for Petitioners.
Shri Deepak Paunikar, Advocate for Respondent.

CORAM : ANIL S. KILOR, J.
DATED : SEPTEMBER 06, 2023

ORAL JUDGMENT :

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the parties.
3. In a suit for recovery of arrears of rent, on death of the plaintiff-landlady her legal heirs viz. Smt. Varsha Ajay Gawhad and Dr.Nilesh Digambar Thakre moved an application for bringing legal heirs of the plaintiff on record within a period of limitation.
4. Out of four legal heirs two have moved the said application on the basis of the Will dated 04/02/2014. However, it was rejected on the ground that all the legal heirs have not sought to be brought on record.
5. This order was passed on 27/08/2021 and immediately thereafter another application was moved by all the four legal heirs on 14/10/2021 admitting that there is a Will dated 04/02/2014 and as per the Will Smt. Varsha Ajay Gawhad and Dr. Nilesh Digambar Thakre

may be brought on record as legal heirs of the plaintiff.

6. The said application came to be rejected by the impugned order dated 26/04/2023 on the ground that similar request was rejected earlier. However, the learned trial Court has committed error in ignoring the fact that earlier application was not moved by all the four legal heirs, whereas, the subsequent application was made by all the four legal heirs requesting the trial Court to bring two legal heirs as per the Will. Once all the four legal heirs had applied, there was no reason for the learned trial Court to reject the application. Even the present writ petition has been filed by all the four legal heirs.

7. In that view of the matter, the objection raised by the learned counsel for the respondent that there is nothing to show that other two legal heirs have given no objection in favour of Smt.Varsha Gawhad and Dr. Nilesh Thakre, does not sustain and accordingly, I am of the opinion that the learned trial Court has committed error in rejecting the applications Exh.22, 23 and 24.

8. As far as delay is concerned, the plaintiff has expired on 21/10/2019 and the application for bringing LRs on record was moved on 27/11/2019. The said application was rejected on 27/08/2021 and

immediately thereafter the second application was moved on 14/10/2021. Thus, it cannot be said that the delay has not been explained. Accordingly, I pass the following order:

- i) The Writ Petition is allowed.
- ii) The impugned orders dated 26/04/2023 passed below Exhs.22, 23 and 24 by 2nd Additional Judge, Small Causes Court, Nagpur in M.J.C. No.66 of 2018, are quashed and set aside and consequently, applications Exhs. 22, 23 and 24 are allowed.

Rule is made absolute accordingly. No order as to costs.

(ANIL S. KILOR, J)

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