

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9611 OF 2025

1. Manubai Baburao Nirmal,
Age 87 Years,
Occupation: Agricultural ,
 2. Shankar Baburao Nirmal ,
Age 63 Years,
Occupation : Service ,
Both Residing At Parli,
Taluka & District Satara,
At Present R/o Room No.16,
Francy, Sheth Chawl,
Behind Harish Hotel, Irla
Swami Vivekanand Road,
Vile Parle (W), Mumbai-400 056
- Petitioners
(Org. Appellant and Org.
Defendant No.1 And 4)

Vs.

1. Sonubai Ramchandra Nirmal,
Age 82 Years,
Occupation: Housewife,
R/o. Degaon, Taluka and
District Satara.
2. Sadashiv Baburao Nirmal,
Age 69 Years,
Occupation: Agriculturist,
R/o. Room No.13, 4th Floor,
Shakti Sadan, Housing Society,
Lamington Road, Tardeo,
Mumbai-400 004 ,
3. Chandrakant Baburao Nirmal,
Age 69 Years,
Occupation: Service,

4. Rajendra @ Raju Baburao Nirmal,
Age 54 Years, Occupation: Service,
No.4 and 5 are R/o. Room No.16,
Francy, Sheth Chawl,
Behind Harish Hotel, Irla,
Swami Vivekanand Road,
Vile Parle (W), Mumbai-400 056,
5. Surekha Baburao Nirmal,
Name After Marriage -
Surekha Suresh Patil,
Age 52 Years,
Occupation-Household,
R/o-Sector No.8, Room No.267,
Koparkhairne, Vashi, New Mumbai.
6. Bebi @Kalpana Ankush Pingale,
Age 46 Years,
Occupation: Household,
R/o. Sonawadi,
Taluka and District – Satara.
7. Laxman Vithoda Nirmal,
(Since Deceased, Through His
Legal Heirs.
- 7a. Sanjay Laxman Nirmal ,
Age 56 Years,
Occupation: Service,
- 7b. Appa Laxman Nirmal,
Age 37 Years,
Occupation: Service,
No.7a&7b Both R/o.Room No.3,
Matunga, Police Station Compound
"A" Block, Mumbai-400 019.
- 7c. Shoba Sunil Chavan,
Age 52 Years,
Occupation: Household,

R/o. Raviwar Peth,
Near Paritacha Par, Near Sunkat
Mangal Office, Wai Taluka,
Wai, District- Satara,

- 7d. Sangita Rajesh Shinde,
Age 44 Years,
Occupation: Household,
R/o. Mangalwar Peth,
Ramacha Goat, Kirana Mal Store,
Satara.
- 7e. Aakku Laxman Nirmal,
Dismissed,
8. Kisan Vithoba Nirmal,
Age 85 Years,
Occupation: Retired,
R/o. Room No.6,
Sahakar Niwas, Samarth,
Nagar Chawl No.2,
Bhandup (West),
Mumbai-400 078.
9. Gangubai Laxman Mane,
Deleted.
10. Sulochana Shamrao Chavan,
Age 87 Years,
Occupation – Household,
R/o. Kasarsthal, Taluka and
District – Satara.
11. Avinash Ramchandra Nirmal,
Age 52 Years,
Occupation : Labourer.
12. Ashok Ramchandra Nirmal,
Age 50 Years,
Occupation: Labourer.

13. Sunita Sunil Kamthe,
Age 69 Years,
Occupation: Household,
No.11 To 13 All R/o. Kumthe,
Taluka and District Satara

... Respondents
(Org. Plaintiff and Defendant
No.2, 3 and 5 to 15)

Mr. Nitin Parkhe (Thorough VC, with Mr. Maruti Sarkar, for the
Petitioner.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 10th NOVEMBER 2025

PC.:-

1. The present Writ Petition takes exception to order dated 17th August 2022 passed by learned District Judge in Miscellaneous Civil Appeal No.133 of 2013, thereby upholding order dated 4th May 2013 passed by Civil Judge, Junior Division, Satara in Regular Civil Suit No.132 of 1997, thereby rejecting Petitioners' application for setting aside *ex parte* Judgment and Decree dated 31st January 2007 passed in Regular Civil Suit No.132 of 1997.

2. The Petitioner was original defendant in Regular Civil Suit No.132 of 1997. The suit was decreed on 31st January 2007. The Petitioner filed Civil Miscellaneous Application No.32 of 2011 for setting aside *ex parte* decree. The trial Court rejected said application on the ground of delay. The aggrieved Petitioner

approached District Judge, Satara vide Miscellaneous Civil Appeal No.133 of 2013. The learned District Judge rejected Miscellaneous Civil Appeal vide impugned order dated 17th August 2022. Hence, this Writ Petition.

3. The learned counsel appearing for Petitioner submits that Petitioner No.1 is old lady. Due to her illness, she could not appear in the suit. Eventually, *ex parte* decree has been passed. He would submit that when said decree was put to execution, Petitioner got knowledge of decree and immediately filed Miscellaneous Civil Application No.32 of 2011 for setting aside *ex parte* decree alongwith application for delay condonation. However, the trial Court erroneously rejected said application. The Appellate Court confirmed said order without looking into merits of matter. He would, therefore, urge that Writ Petition may be allowed and Petitioner be granted opportunity to defend the suit on merits.

4. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that Petitioner/Defendant was party defendant in Regular Civil Suit No.132 of 1997 instituted for partition and separate possession.

Record indicates that defendant appeared in proceeding through an Advocate, but failed to contest the claim in suit. The suit was pending from 1997 to 2007 and it has been decreed after recording of evidence of plaintiffs.

5. The Petitioner filed Civil Miscellaneous Application No.32 of 2011 on 11th April 2011 for setting aside decree passed on 31st January 2007. There was delay of more than four years in filing application. No plausible explanation is given for the delay. Eventually, the trial Court dismissed the application. The learned District Judge also found that delay of more than four years to prefer application for setting aside decree has not been explained.

6. In that view of the matter, in absence of any plausible reason to condone delay of more than four years in filing application for setting aside *ex parte* decree, the view taken by Courts below cannot be faulted. No case is made to cause interference under Article 227 of Constitution of India.

7. Hence, the Writ Petition stands rejected.

(S. G. CHAPALGAONKAR, J.,