



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

WRIT PETITION NO. 5506 OF 2025

1. Prakash Mahadeorao Gaikwad, Aged 63 years, Occ: Business, R/o House No.1C, Ganeshpeth, Near Khobragade Hospital, Tah. and Dist. Nagpur.
2. Neeraj Kishorkant Soni, Aged 51 years, Occ:Business, R/o Plot No.762, Model Mill Close Gate, Kamal Bagh, Tah. and Dist. Nagpur.

PETITIONERS

VERSUS

1. Vidya Arun Kotangale, Aged : 52 years, Occ. Housewife.
2. Avina Arun Kotangale, Aged: 27 years, Occ:Student.
3. Mallaika Arun Kotangale, Aged 23 years, Occ:Student.

Nos.1 to 3 R/o Flat No.10C, Vivek Apartment, Ring Road, Jaripatka, Nagpur, Tah. and Dist. Nagpur.

4. Anand Bhanudas Dhabarde. (~~Deleted~~)

RESPONDENTS

Shri N.B. Kalwaghe, counsel for the petitioners.
Shri R.R. Srivastava, counsel for the respondent nos.1 to 3.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : JANUARY 16, 2026

ORAL JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with consent of the learned counsel for the parties.

2. The petitioners who are original defendants in the suit have filed this petition challenging the order dated 01.08.2025 passed by the trial Court below Exhibit 177 rejecting the application filed by the defendant no.1 to set aside the order dated 07.07.2025 passed below Exhibit 169. In the suit filed by the plaintiffs seeking cancellation of the sale-deed, agreement to sell and the power of attorney, evidence was led by the

parties and during evidence of the defendants, the witness of the defendants Prakash Gaikwad was absent on several dates and resultantly the order dated 07.07.2025 was passed by the trial Court below Exhibit 169 by which the evidence was ordered to be closed. Thereafter, the defendants filed application vide Exhibit 177 seeking to set aside the order dated 07.07.2025 which was rejected by the trial Court. The petitioners have challenged the aforesaid orders by way of instant petition.

3. The learned counsel for the petitioners/original defendants submitted that the defendants were attending the proceedings regularly however on account of severe health issues, the defendant no.1 was required to leave the Court on the date of his cross-examination. He submitted that by ignoring the genuine reasons put forth by the defendant no.1, the trial Court passed the order dated 07.07.2025 and closed the evidence of the defendants. He submitted that thereafter immediately on the next date i.e. on 24.07.2025, the defendants filed application vide Exhibit 177 and prayed for setting aside the order dated 07.07.2025 and also requested for permission to adduce further evidence. He submitted that the trial Court has passed the impugned order by ignoring that an opportunity to lead evidence is a valuable right of the parties and the defendants cannot be deprived from an opportunity to contest the suit on merits.

4. By strongly opposing the petition, the learned counsel for the respondents submitted that the defendants in the suit were not diligent and have avoided the cross-examination. He submitted that the reasons put forth about the health issues are not at all genuine and in view of the

repeated adjournments sought by the defendants before the trial Court, the application deserved to be rejected. He therefore justified the impugned order.

5. The limited controversy which falls for my consideration is whether the petitioners/defendants in the suit need to be deprived of an opportunity to lead evidence in the wake of their conduct in the civil suit. Although the record reveals that the defendants have sought several adjournments before the trial Court, as referred in the impugned order, however it is also crucial to note that the application at Exhibit 177 was filed immediately on the next date in the suit after the order dated 07.07.2025 was passed. Even though the earlier conduct of the defendant was not very diligent, interest of justice demands that an opportunity to lead evidence needs to be granted to the defendants so that the suit is contested on merits. Having regard to the controversy involved in the suit related to challenge to the sale-deed, agreement to sell and power of attorney, it is desirable that the suit is contested on merits by affording an opportunity to the parties to lead evidence. At the same time, the hardship caused to the plaintiffs need to be compensated by awarding appropriate costs.

6. Having regard to the overall factual and legal aspects, depriving the defendants of an opportunity to lead evidence would be a pedantic approach and not warranted in the instant case, particularly considering the fact that the application at Exhibit 177 was filed immediately on the next date after the order dated 07.07.2025 was passed. Hence, the

petition needs to be allowed by awarding appropriate costs. Hence, the following order is passed:-

- I. The writ petition is allowed.
- II. The orders dated 07.07.2025 below Exhibit 169 and order dtd. 01.08.2025 passed by the trial Court on application at Exhibit 177 are quashed and set aside.
- III. The application filed by the defendant no.1 at Exhibit 177 to set aside the order dated 07.07.2025 passed below Exhibit 169 is allowed, subject to costs of Rs.25,000/- to be paid by the petitioners/defendants to the plaintiffs by depositing the same before the trial Court.
- IV. Having regard to the controversy involved in the civil suit, the trial Court is directed to expeditiously decide Special Civil Suit No.28 of 2022, preferably within a period of six months from the date of uploading of this judgment.
7. Rule is made absolute in aforesaid terms.

(PRAFULLA S. KHUBALKAR, J.)