



**Order below Exh.17 in**  
**Civil Misc. Application No.116/2020**

[Rushikesh Deshpande Vs. Sudhir Deshpande (deceased through LR's)]

Applicant filed the present application thereby providing detailed addresses of opponent nos.1(A), 1(C) to 1(E). The opponent no.1(C) to 1(E) are also the opponent nos.3 to 5 in this matter.

(2). To this application, the opponent no.2 has taken a detailed objection by scribing his say on the backside of the application itself. As per this opponent, the applicant is willfully not providing proper and correct addresses of opponent nos.1(A), 1(C) to 1(E) as a result of which the matter is prolonged. Moreover, the Special Civil Suit No.93/2015, which was filed for partition and separate possession of his share was dismissed for want of prosecution. In that matter also, matter was dismissed against the opponent no.1(A) (C) to (E) for not taking any steps. Even then, the applicant is willfully giving different addresses from time to time of these opponents and prolonging the matter. Lastly, prayed for dismissal of application.

(3). Heard learned advocate Shri.R.A.Latkar for opponent no.2 at length. He contended that, the applicant had initially filed a Special Civil Suit No.93/2015 for partition of the properties and for his separate possession of share in it. The said suit was dismissed for want of prosecution. Furthermore, in that matter, a detailed order was passed by that court thereby observing that, applicant has miserably failed to get the suit summons served upon the opponent no.1(A) (C) to (E). Despite that, the same addresses, which were mentioned in the aforesaid suit, are mentioned in this matter also despite having knowledge that they are incorrect. The same is done only to prolong the matter with an intention

to harass opponent no.2. Moreover, in this matter, the report of Bailiff at Exh.10 is self-explanatory. It clearly reveals that, care taker had told the bailiff that these opponents are not residing here. Therefore, the matter is required to be proceeded further without their presence. Moreover, in this matter also, more than three and half years have been elapsed, the applicant is willfully giving different addresses from time to time of these opponents only with an intention to prolong and protract the present proceeding. Lastly, prayed for dismissal of application.

(4). On the other hand, learned advocate Shri.A.P. Sohani for applicant argued that, applicant has mentioned the same addresses which were mentioned in Exh.1 of the Spl.C.S. No.93/2015. Moreover, if the Bailiff report at Exh.10 is perused then, the caretaker has categorically mentioned that these opponents do visit some time in between. Therefore, it can't be said that, applicant has provided false addresses. Moreover, as soon as, the applicant came to know about the new addresses of these opponents, the same is furnished by way of the present application. Hence, the application be allowed.

(5). Perused application, say and record and proceeding. It reveals that, the present miscellaneous application is filed for condoning the delay in preferring restoration application for setting aside the order of dismissal of Special Civil Suit No.93/2015 of dated 23/10/2019.

(6). In the present matter, notices came to be issued to opponent nos.1(A), 1(C) to 1(E) i.e. opponent nos.3 to 5 vide Exh.10. The Bailiff report shows that, the Bailiff had met the caretaker on the said address, who reported to him that, the opponent no.1(A) is residing at Pune, whereas, the other opponents are residing at their respective matrimonial houses and they sometimes visit there. Therefore, the Bailiff came back without serving the notices. Under these circumstances, it

cannot be said that, the addresses, which were provided by the applicant, were totally false.

(7). Today, the applicant by way of the present application, has provided detailed addresses of these opponents. When applicant has taken proper steps, then, the matter cannot be proceeded further without issuing notices of this application to opponents. The service of notice has to be completed in one of the forms as mentioned in Order V of Code of Civil Procedure, 1908. Unless finality of service of notice or default in taking steps for service of notice, the matter cannot be proceeded for further stage. As the Bailiff report at Exh.10, the notices could not be served because the opponents were not residing on the address shown but, as they do sometimes visit that place in between. Therefore, the proposition made the learned advocate for opponent no.2 that, said notices were willfully got issued on the same address upon which he could able to serve the suit summons in Spl.C.S.No.93/2015 cannot be accepted.

(8). It is pertinent to mention here that, the reasons for which the suit have been dismissed cannot be taken into consideration while deciding an application for delay. Therefore, the contention of the learned advocate for opponent no.2 that, the said suit came to be dismissed for want of prosecution for not taking steps against the opponent no.1(A), 1(C) to 1(E) for seven years cannot be taken into condonation while deciding the present application. Therefore, the objection of the opponent no.2 for rejection of present application, in which, the applicant has provided new detailed addresses of these opponents is liable to be discarded. In view of this, it is necessary to allow the application and to issue the notices of this matter to these opponents. Hence, the following order.

**ORDER**

- (1). The application at Exh.17 is hereby allowed.

Sangli.  
Date:-02/09/2023.

(M.M.Rao)  
Civil Judge Sr.Dn., Sangli.

**CERTIFICATE**

I affirm that, the contents of this P. D.F. file are same, word to word as per the original order.

Name of Stenographer : G. S. Parve

Court : Civil Judge Sr. Dn., Sangli

Date : 02/09/2023

Order signed by the Presiding Officer on : 04/09/2023

Order uploaded on : 04/09/2023