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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9844 OF 2013

Prathiviraj @ Mansing Pralhad Patil
Age - 37 years, Occ - Agriculture
R/o Banegaon, Taluka - Ausa
District - Latur

PETITIONER

VERSUS

1. Sow. Mandabai w/o Pralhad Patil
Age - 61 years, Occ - Household
R/o Banegaon, Taluka - Ausa
District - Latur

RESPONDENTS

2. Deepak s/o Pralhad Patil,
Age - 33 years, Occ - Agriculture
R/o As above

3. Ravi s/o Pralhad Patil,
Age - 32 years, Occ - Agriculture
R/o As above

4. Pralhad s/o Shamrao Patil
Deceased, no notice is necessary

5. Dhondabai w/o Pralhad Patil,
Age - 68 years, Occ - Household
R/o Banegaon, Taluka - Ausa
District - Latur

6. Arun s/o Pralhad Patil,
Age - 33 years, Occ - Agriculture
R/o As above

7. Lahubai w/o Rameshwar Chandeal
Age - 35 years, Occ - Household
R/o Pimpri, Taluka and District - Nanded

(DISMISSED)

8. Venkatrao s/o Daulatrao Patil,
Age - 71 years, Occ - Agriculture
R/o Ganjankheda, Taluka - Ausa

District - Latur

9. Padminbai w/o Piraji Patil,
Age - 46 years, Occ - Household
R/o Bodhal, Taluka - Aland
District - Gulbarga (Kar. State)
10. Deubai w/o Mukesh Parihar
Age - 41 years, Occ- Agriculture
R/o Banegaon, Taluka - Ausa
District - Latur

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Mr. B. N. Patil, Advocate for the petitioner
Mr. M. L. Dharashive, Advocate for the respondents No.1 to 3
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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 27th JULY, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. Learned advocate for the petitioner submits that application Exhibit-101 in Regular Civil Suit No. 78 of 2007 at the behest of the plaintiffs has been erroneously allowed by learned Civil Judge, Junior Division, Ausa under his order dated 15th October, 2013.
3. Learned advocate for the petitioner-defendant contends that perusal of application Exhibit-101 shows that it is being

scanty and it does not explain delay nor does it seek setting aside of abatement. He further submits that the defendants had earlier on pointed out that the proposed defendant No.8 would also be required to be a party to the suit, however, at that time it was ignored by plaintiffs. Learned advocate further states that learned civil judge, junior division had cursorily dealt with delay and abatement and under the circumstances, due to the delay, rights had accrued to the defendants, which are sought to be taken away under the impugned order.

4. Mr. Dharashive, learned advocate for respondents-plaintiffs, however, contends that defendant No.1 died after filing of the suit, in 2012. Proposed defendant No. 8 is being sought to be brought on record as legal heir of deceased defendant No.1. It is not a case of the defendants that she is not heir of defendant No.1. He further submits that marriage of defendant No.8 had taken place before 1993 and as such, she had not been arrayed as defendant. He further submits that after death of defendant No.1 according to the Hindu Succession Act, name of defendant No.8 is required to be brought on record. He submits that delay, if any, occurred in making the application, as plaintiffs are agriculturists and were not aware of the procedural compliances required. He submits that the application had been

moved upon advice as they were told that such an application would be necessary after death of defendant No.1. He submits that there is technical delay, however, after the knowledge about the procedure, the application was moved immediately.

5. Looking at aforesaid and that the parties are from *mofussil* area and their literacy level may not be high enough to appreciate legal intricacies and niceties, and generally, pleadings by parties from *mofussil* area are to be liberally construed. I do not see any infirmity with the reasons that have weighed with the trial court while allowing the application. Though it is the submission on behalf of the petitioner that there is no formal request for condonation of delay and setting aside of abatement, however, it appears that the considerations appear to have been impliedly dealt with in the order. It has often been construed that when such an order is passed, by implications, it has all the shades of consideration of relevant aspects which are required to be dealt with *viz.*, condoned the delay and set aside the abatement order.

6. Having regard to aforesaid, this would not be a fit case wherein extra ordinary powers of this court are required to be invoked. Writ petition, as such, is not being entertained and is

dismissed. However, inconvenience being caused to the petitioner be met with by saddling costs on the plaintiffs. In the circumstances, I deem it appropriate that the plaintiffs shall pay costs of Rs.2500/- to the defendants. The amount of Rs.2500/- be deposited in the trial court within a period of four weeks from the date of receipt of writ of this order. The amount so deposited be appropriated towards costs and be paid to the defendants. Rule stands discharged.

[SUNIL P. DESHMUKH, J.]