

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.11345 OF 2014**

**Fakira Khanderao Bhosale and ors. : Petitioners**  
**versus**  
**Indumati Adnyan Bhosale and ors. : Respondents.**

**Mr. Akshay Shinde i/by Mr. A M Kulkarni for the petitioners**  
**Mr. Vishwanath Patil i/by Mr. S P Khedekar for the Respondent Nos.1 and 2.**

**CORAM : R. M. SAVANT, J.**  
**DATE : 21<sup>st</sup> September 2015**

**P.C.**

1           The writ jurisdiction of this Court is invoked against the order dated 28/09/2012 passed by the learned Joint Civil Judge, Senior division Barshi by which order the Application (Exhibit 106) filed by the Defendant Nos.6 and 7 for their transposition as Plaintiff Nos.2 and 3 came to be allowed and the said Defendants came to be transposed as Plaintiffs.

2           The suit in question was filed by one Adnyan Bhosale who expired on 28/03/2001. The Defendant Nos.6 and 7 had filed an application for their impleadment on the ground that they are the wife and daughter of the said Adnyan Bhosale. The said application was filed under Order I Rule 10 of the Code of Civil Procedure. The said application came to be allowed in the year 2004 and they were joined as Defendant Nos.6 and 7 to the suit. The said Defendant Nos.6 and 7 thereafter filed their written statement and counter

claim on 11/06/2004. It appears that some other heirs of the Plaintiff Adnyan Bhosale were brought on record as Plaintiff Nos.1(A) to 1(c). The suit came to be dismissed for non-prosecution on 24/1/2011 as the said Plaintiff Nos.1(A) to 1(C) were not diligently prosecuting the suit. After the suit came to be dismissed for default, on acquiring knowledge the Defendant Nos.6 and 7, who had filed the counter claim and whose counter claim was being proceeded with, filed an application on 23/12/2011 for being transposed as Plaintiffs to prosecute the suit.

3 The said application was opposed to on behalf of the Petitioners i.e. the Defendant Nos.1 to 4 on the ground that since the Defendant Nos.6 and 7 have filed their counter claim, their stand was antithetical to that of the original plaintiff and therefore they should not be allowed to be transposed as Plaintiffs.

4 The Trial Court considered the said application and having regard to the fact that the Defendant Nos.6 and 7 had the same interest as the Plaintiffs in the matter of getting the suit property partitioned and since the Plaintiff Nos.1(A) to 1(C) were not diligently prosecuting the suit in question allowed the said application and transposed the Defendant Nos.6 and 7 as Plaintiff Nos.2 and 3. As indicated above it is the said order dated 28/09/2012 which is taken exception to by way of the above Writ Petition.

5           It is sought to be contended on behalf of the Petitioners by the learned counsel Shri Shinde that since the suit had stood dismissed for non-prosecution, the Trial Court could not have considered the application filed by the Defendant Nos.6 and 7 for their transposition as Plaintiffs unless the suit was restored to file. In my view, acceptance of such contention would be taking a hyper technical view of the matter. It is required to be noted that the counter claim filed by the Defendant Nos.6 and 7 was proceeded with and in the counter claim the Defendants were seeking the same reliefs as the Plaintiff in the suit. It is also required to be noted that the order which is passed in September 2012 is sought to be taken exception to in November 2014. The instant Petition appears to be an afterthought and is therefore also required to be dismissed on the ground of delay and laches. The above Writ Petition is accordingly dismissed.

**[R.M.SAVANT, J]**

Certified to be true and correct copy of the original signed Order.