

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

WRIT PETITION NO.2200 OF 2014

Shri. Dattu Tukaram Chavan

(Since deceased through his legal heirs)

Shri. Kachru Bhika Chavan and others

.. Petitioners

Versus

Shri. Pandurang Rajaram Chavan

.. Respondent

Shri. Sachin Gite, for the Petitioners.

Shri. Pratik B. Rahade, for the Respondent No.1.

CORAM : R.M. SAVANT, J.

DATE : 28th AUGUST, 2015

PC.

1. The above Writ Petition takes exception to the order dated 09.12.2013 passed by the Learned 2nd Joint Civil Judge, Junior Division, Nashik, by which order the application filed by the Plaintiffs to condone the delay in filing the application and to set aside the abatement qua the Plaintiff No.1 came to be rejected. The delay was of three years and the reasons mentioned by the Applicant did not commend acceptance to the Trial Court. It is required to be noted that there is more than one Plaintiff who have filed the suit in question and the abatement is qua the Plaintiff No.1. The Learned Counsel appearing for the Respondent herein i.e. original Defendant opposes the above Petition, but ultimately leaves it to

this Court. In my view, having regard to the facts as aforesaid where there is more than one Plaintiff, it would be just and proper to set aside the order dated 09.12.2013 and in turn allow the application Exh.34 filed by the Plaintiffs for setting aside the abatement qua the Plaintiff No.1. The impugned order is accordingly quashed and set aside and resultantly, the application Exh.34 stands allowed. Amendment to be carried out within four weeks from date and amended cause title to be served on the other side. In the facts and circumstances of the case, the Plaintiffs to pay costs of Rs.2000/- to the Respondent within four weeks. With the directions as aforesaid, the above Writ Petition is disposed of.

[R.M. SAVANT, J]