

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

WRIT PETITION NO.3563 OF 2014

Satish Pandurang Aradhe : Petitioner.
Versus
Janardhan Dada Ronge died
Through LR
Baban Janardhan Ronge and ors. : Respondents.

Mr. Ajay A Joshi for the Petitioner.

CORAM : R. M. SAVANT, J.
DATE : 26th August 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 30/11/2013 passed in Civil Misc. Application No.36 of 2007 by the learned Joint Civil Judge, Junior Division, Pandharpur by which order the Application filed by the heir of the original Plaintiff for restoration of Regular Civil Suit No.246 of 1987 by setting aside the abatement came to be allowed and resultantly the order of abatement passed in the said Regular Civil Suit No.246 of 1987 came to be set aside. The petitioner also challenges the order dated 30/08/2011 passed in Civil Misc. Application No.35 of 2007 by which order the application for condonation of delay in filing the application for setting aside the abatement came to be allowed.

2 The suit in question being Regular Civil Suit No.246 of 1987 has been filed for partition of the suit property. It is in the said suit that original

Plaintiff Janardan Ronge expired whose heirs were required to be brought on record. It was the case of the Applicant, who is the heir of the said Janardan, that he was not knowing about the abatement of the suit and came to know about it when he went to attend the proceedings in Regular Civil Suit No.218 of 2007 and it is thereafter he has obtained certified copies and preferred an application for condonation of delay and for setting aside abatement. It was further his case that his father's advocate was also no more and hence he could not take necessary steps. In support of the said application, the evidence was led on behalf of the Applicant wherein his statement was recorded that during the pendency of Regular Civil Suit No.246 of 1987, he was residing at Daund which is far away from Pandharpur. The application being Civil Misc. Application No.35 of 2007 was allowed by the Trial Court by order dated 30/08/2011 and thereby delay in filing the application for setting aside abatement was condoned.

3 It is thereafter that the application for setting aside abatement being Civil Misc. Application No.36 of 2007 was considered by the Trial Court and by the impugned order dated 30/11/2013 the Trial Court has allowed the same. The Trial Court has taken into consideration the ground made out by the Applicant that he became aware of the abatement order being passed much later and since his father's advocate who was appearing in the suit had also expired, the application could not be filed earlier. The Trial Court also

considered the fact that since it is a suit for partition, the same does not abate on the death of a party.

4 In my view, having regard to the fact that the Trial Court deemed it appropriate to condone the delay in filing the application for setting aside abatement, the logical sequitur of the same would be to allow the application for setting aside the abatement. In my view, the order passed by the Trial Court cannot be taken exception to. No case for interference in the writ jurisdiction of this Court is therefore made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]