

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

WRIT PETITION NO.5183 OF 2011

**Smt. Nirmalabai Baburao Chalke
Through her Power of Attorney
Yashwant Janardhan Bhagat : Petitioner
versus
Yashwant Purshottam Bapat
deceased through LRs
Jayashree Yeshwant Bapat and ors. : Respondents.**

**Mr. Rahul Deodhar i/by Mr. S M Kamble for the Petitioner.
Ms. Gauri Godse for the Respondent No.1.
Mr. N R Bubna for the Respondent No.5.**

**CORAM : R. M. SAVANT, J.
DATE : 06th October 2015**

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 02/03/2011 passed by the learned Principal District Judge, Raigad Alibag by which order the Misc. Application No.40 of 2009 filed by the Petitioner came to be rejected.

2 The said Misc. Application No.40 of 2009 was filed for restoration of Appeal No.103 of 1990. The said Appeal was filed against the order of dismissal of the suit on the ground that the Civil Court did not have jurisdiction. The said order is dated 25/01/1990. It is against the said order

that the said Appeal No.103 of 1990 came to be filed. The said Appeal came to be dismissed for non-prosecution on 11/03/1998. It is long thereafter on 08/06/2009 that the instant application for condonation of delay in filing the restoration application came to be filed. The application has been filed by the power of attorney. The delay was sought to be justified on the grounds mentioned in the application and especially paragraphs 5 and 6 of the application. The averments in the said application are to the effect that the applicant is an illiterate lady and was relying upon the advice of her advocate one Shri Chambale. However, after she had not heard for long time, she had executed a power of attorney and on the power of attorney holder making inquiries that it was revealed that the Appeal filed by he has been dismissed for non-prosecution.

3 The said application for condonation of delay was replied to on behalf of the Respondents to the Appeal. The Respondents opposed the said Appeal on the ground of there being a huge delay in filing the application as also on the ground that in view of the fact that the Petitioner had prosecuted the proceedings in this Court by way of writ petition, it could not be said that the Petitioner was not conversant with the court proceedings and the niceties of law.

4 The application was considered by the learned Principal District

Judge, Raigad Alibag, which as indicated above has been rejected by the impugned order. The reasons put forth by the applicant did not commend acceptance to the learned Principal District Judge, Raigad Alibag . The learned Principal District Judge was of the view that the said reasons cannot be said to constitute sufficient cause for the said huge delay in filing the application.

5 The learned counsel appearing for the Petitioner Shri Deodhar would seek to reiterate the case of the Petitioner/Applicant before the Lower Appellate Court. It was the submission of the learned counsel for the Petitioner that the Petitioner/Applicant can be put to terms and the Appeal be restored to file.

6 In my view, it is not possible to accept the said contention of the learned counsel for the Petitioner/Applicant. In the context of the fact that there is the said huge delay of more than 10 years in filing the application. The reasons mentioned in paragraphs 5 and 6 can hardly be said to constitute the sufficient cause for condoning the said huge delay. As indicated above, the applicant cannot be said to be a person not conversant with the court procedure having filed the proceedings in this Court also. Moreover even if it is assumed that the advocate did not inform the applicant of the developments in the Appeal, what stopped the applicant from making inquiries therefore begs an answer. In that view of the matter no indulgence can be shown to the

Petitioner/Applicant. Hence no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]

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