

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO.21293 OF 2014**

Vincent Diago Dinis @ Wilson Digho Dinis	..Petitioner
Vs.	
Manu Kaitan Dinis & Ors.	..Respondents

Mr. Rameshwar Gite for the Petitioner

**CORAM : R. M. SAVANT, J.
DATE : 3rd FEBRUARY, 2015**

P.C.

1 The Writ Jurisdiction of this Court under Article 227 of the Constitution of India is invoked against the order dated 14-3-2014 passed by the Learned 6th Joint Civil Judge Senior Division, Pune, by which order the applications Exhibit 43 and 53 to bring the legal heirs of the Plaintiff No.1- Dumubai Kaitan Dinis on record and for condonation of delay in filing the application, came to be allowed and resultantly the legal heirs of the Plaintiff No.1 were allowed to be brought on record. The Suit in question being Regular Civil Suit No.1282 of 1982 was filed by the Plaintiffs for possession. The said Suit came to be decreed by the Trial Court by the Judgment and Order dated 13-9-1987 and the Defendants were directed to hand over possession of the suit property to the Plaintiffs.

2 The Defendants carried the matter by way of an Appeal being Regular Civil Appeal No.95 of 1988. The Lower Appellate Court set aside the

decree and remanded the matter back to the Trial Court for adjudication on issues which were spelt out in its order. The heirs of the Plaintiff No.1 Dumubai filed an application for bringing themselves on record in place of the Plaintiff No.1, as she has expired in the year 1991 . In the said application, it was averred by them that after the Lower Appellate Court had set aside the order passed by the Trial Court and the matter came to be remanded, they were awaiting notice from the court for appearance in the Suit. However, it is their case that their Advocate informed them that the notice to remain present was issued on 29-4-2008. The heirs of the Plaintiff No.1 thereafter filed an application Exhibit 53 seeking condonation of delay in filing the application for bringing them on record. The case made out was that after the Suit was remanded to the Trial Court by the Lower Appellate Court in the year 1990, the heirs of the Plaintiff No.1 and the other Plaintiffs were making inquiries with their Advocate who informed them that as the papers and proceedings in the Suit have been lost, they would be intimated as soon as the said papers and proceedings were found. It is further their case that similar inquiries were made by them from time to time and ultimately in the year 2005, they filed an application with the Learned Registrar of the District Court more specifically on 21-11-2005 requesting the Learned Registrar to locate the papers and proceedings in the said Suit and list the said Suit on board of the concerned Court. It is in the year 2008 after the papers and proceedings were located that notices were issued to the Plaintiffs and the Defendants to remain present

before the concerned Court and it is pursuant thereto that the instant application was filed seeking condonation of delay in filing the application for bringing the heirs of the Plaintiff No.1 on record. The said application was oppose to on behalf of the Defendants.

3 The Trial Court accepted the reasons mentioned in the said application seeking condonation of delay and by its order dated 18-4-2011 allowed the said application. The Trial Court observed that the record discloses that the parties were busy in reconstruction of the filing as the Written Statement was not found on record and considering the provisions of Order 22 the Trial Court deemed it appropriate to condone the delay. The said order was challenged before this Court by way of Writ Petition No.6429 of 2011. A learned Single Judge of this court on 5-10-2011 set aside the said order and remanded the matter once again for denovo consideration. On remand the Trial Court again decided the application by order dated 30-3-2013 which was again challenged before a Learned Single Judge of this Court by way of Writ Petition No.5499 of 2013. On 21-9-2013 the said Writ Petition came to be allowed and the matter was once again remanded back to the Trial Court for a denovo consideration. It is on remand that the impugned order dated 14-3-2014 has been passed by the Trial Court. The Trial Court adjudicated upon the said applications Exhibit 43 and Exhibit 53. The Trial Court has accepted the reasons mentioned in the application Exhibit 53 seeking condonation of delay.

The Trial Court has observed that the reading of the correspondence discloses that the papers in the Suit were missing and even the roznama was not written for long. The Trial Court observed that the R and P of the Appeal was not sent to the Trial Court and therefore the suit papers were not available in the Trial Court. The said fact therefore strengthens the case of the Applicants that the application could not be moved as the papers of the Suit were not available.

4 In my view, having regard to the finding recorded by the Trial Court as regards the “B” file of the Suit being missing, the case of the Applicants i.e. the heirs of the Plaintiff no.1 that the application could not be filed earlier commended acceptance. The Trial Court having deemed it appropriate to exercise discretion in favour of the Applicants, this Court does not deem it appropriate to interfere with the said discretion. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]