

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8889 OF 2015**

1]	Shri Sambhajirao Kondiba Dhangekar	]	
	Deceased	]	
		]	
1a]	Smt.Suman Sambhajirao Dhangekar	]	
	Age : 67 years, Occ. Housewife	]	
		]	
1b]	Shri Dattatraya Sambhajirao Dhangekar	]	
	Age : 27 years, Occ – Business	]	
		]	
	Both r/at : 971, Ravivar Peth,	]	
	Pune 411 002	]	 Petitioners.

Versus

	Shri Khashaba Dnyanoba Thorat (Deceased)	]	
		]	
1]	Smt. Bhagirathibai Khashaba Thorat	]	
	Age : adult, Occ. Housewife	]	
	R/at : Plot No.29M, Niranjan Housing	]	
	Near Mahadev Mandir, Opp. Blue	]	
	Heaven School, Katraj Kondwa Road,	]	
	Katraj, Pune 46	]	
		]	
2]	Shri Prakash Khashaba Thorat	]	
	Age : 41 yrs. Occ. Business	]	
	R/at : Plot No.29M, Niranjan Housing	]	
	Near Mahadev Mandir, Opp. Blue	]	
	Heaven School, Katraj Kondwa Road,	]	
	Katraj, Pune 46	]	
		]	
3]	Shri Zumbarlal Sundarlal Pardesi/Kumbhar	]	
	Age : adult, Occ : Business	]	
		]	
4]	Shri Kishanlal Sundarlal Pardesi/Kumbhar	]	
	Age : adult, Occ : Business	]	
		]	
3]	Shri Shankar Sundarlal Pardesi/Kumbhar	]	
	Age : adult, Occ : Business	]	
	3 to 5 r/at 824, Ravivar Peth, Pune-411002	]	 Respondents

Mr. N R Bubna for the Petitioner.
Mr. Shriram S Kulkarni for the Respondents.

CORAM : R. M. SAVANT, J.
DATE : 02nd December 2015

ORAL JUDGMENT

1 Rule, considering the challenge raised in the above Petition, made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the order dated 11/06/2015 passed by the learned District Judge – 8, Pune by which order the Application being Misc. Civil Application No.641 of 2014 filed by the Petitioner herein seeking condonation of delay of 10 days in filing the Review Application came to be rejected.

2 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the Petitioners herein are the heirs of the original Plaintiff Shambhajirao Kondiba Dhangekar who had filed the suit in question against the Respondents herein being Regular Civil Suit No.288 of 1999 in the Small Causes Court, Pune for eviction of the Respondents on the ground of non-user and sub-letting.

3 It appears that the Respondents had filed an Application for

addition of a co-owner as a party Defendant to the suit. The said Application came to be allowed by the Trial Court on 11/01/2005 and the Plaintiff was directed to carry out amendment within the time stipulated in the said order. In view of the fact that the said order was not complied with the suit came to be dismissed for non-prosecution by the Trial Court under Order XXXIX Rule 11 of the Code of Civil Procedure on 15/04/2005. The Plaintiff with a view to challenge the said order dated 15/04/2005 proposed to file an Appeal and since there was a delay of 7 days in filing the same, the Plaintiff filed Civil Misc. Application No.546 of 2005 for condonation of the said delay of 7 days. The said Civil Misc. Application No.546 of 2005 was pending for almost a period of 8 years and was dismissed for non-prosecution on 06/09/2013 as the Appellant i.e. the original Plaintiff had failed to remain present before the Trial Court on the said date. The Appellant/Plaintiff got wind of the said order and filed an Application for Review of the said order dated 06/09/2013, however, in view of the fact that there was a delay of about 10 days in filing the said Review Application, he filed Misc. Civil Application No.641 of 2014 seeking condonation of delay of 10 days in filing the Application for Review. The grounds justifying the said delay have been set out in paragraph 8. It has been averred in the said paragraph that it is on account of oversight and inadvertent error on the part of the junior advocate in not pursuing the matter, that the Application came to be dismissed in default. It has further been averred in paragraph 9 that the valuable legal rights of the applicants are involved in the

present case and it is therefore necessary to condone the delay that has occurred in filing of the main Application for Review. The said Application has been replied to on behalf of the Defendants. The Defendants have questioned the reasons mentioned in the Application and it seems also sought to point out the conduct of the applicants.

4 The Trial Court considered the said Application and has by the impugned order dated 11/06/2015 has rejected the said Application what has weighed with the Trial Court, as the order discloses, is the fact that the suit has been dismissed for non-prosecution on account of the non-compliance of the order dated 11/01/2005 and thereafter the Appeal has also been filed belatedly and thereafter the instant Application has also been filed belated. As indicated above, it is the said order dated 11/06/2015 which is taken exception to by way of the above Petition.

5 The learned counsel for the parties i.e. the learned counsel Shri Bubna for the Petitioners and learned counsel Shri Kulkarni for the Respondents would assert the case of the parties that they represent which was asserted before the Court below.

6 Having heard the learned counsel for the parties, I have considered the rival contentions. As indicated above, the issue is whether the

delay of 10 days in filing the Review Application is required to be condoned. What seems to have weighed with the Trial Court is the conduct of the Plaintiff whilst prosecuting the suit in question and thereafter in filing the proceedings for restoration of the suit. Though it is the case of the Defendants that the Application is bereft of any reason, the said contention cannot be accepted in the light of the averments made in paragraph 8 of the Application. As indicated above, it has also been averred in paragraph 9 that if the delay is not condoned, then the Plaintiff is in the danger of losing his valuable rights in respect of the suit property.

7 In my view, the Trial Court has taken a hyper technical view of the matter and has rejected the Application for condonation of delay. It is well settled that in matters of condonation of delay an approach which furthers the cause of substantial justice is required to be adopted and that a party should be given an opportunity to prosecute the proceedings on merits rather than being thrown out on technicalities. If the said test is applied, then opportunity is required to be granted to the Plaintiff to prosecute the Application for Review on merits. In that view of the matter, the impugned order dated 11/06/2015 is required to be quashed and set aside and is accordingly quashed and set aside. The delay in filing the Review Application accordingly stands condoned. The above Writ Petition is allowed. Rule is accordingly made absolute to the said extent. In the facts and circumstances of the present case, the Petitioners to pay

costs of Rs.3,000/- to the Respondents. The same to be deposited in the Trial Court within four weeks from date. The Respondents would be at liberty to withdraw the said costs.

[R.M.SAVANT, J]