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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6507 OF 2015

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| 1. | Vinayak Govindrao Avkale
Age - 60 years, Occ - Agriculture
R/o At Post Javkheda Theng (Avkale)
Taluka - Jafrabad, District - Jalna | PETITIONERS |
| 2. | Ukhai Moti Sundere,
Age - 55 years, Occ - Agriculture
R/o Tadeगाonwadi, Taluka - Bhokardan,
District - Jalna | |
| 3. | Rukhmanbai Vijaysingh Kakarwal
Age - 30 years, Occ - Agriculture
R/o Tadeगाonwadi, Taluka - Bhokardan,
District - Jalna | |

VERSUS

Sunderbai Shambhusing Kakarwal Age - 65 years, Occ - Agriculture & Household R/o Tadeगाonwadi, Taluka - Bhokardan, District - Jalna	RESPONDENT
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Mr. Suhas B. Ghute, Advocate for the petitioners	
Mr. D. R. Irale Patil, Advocate for the respondent	

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 28th MARCH, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally with consent.
2. The respondent had instituted proceedings bearing Regular

Civil Suit No.38 of 1999 for cancellation of sale deeds dated 26th April, 1993 and 10th October, 1995 and for possession of properties.

3. The suit proceeded with, however, for want of prosecution, the suit came to be dismissed on 8th June, 2007. Till 2012, there was no movement. No corrective action was taken in respect of dismissal of the suit. An application Exhibit-6 came to be moved for restoration of the matter on 30th October, 2012 along with an application for condonation of delay, contending that the plaintiff came to know about the order, around October, 2012 and accordingly the application had been moved stating that there is delay of four months twelve days.

4. Petitioners - defendants opposed the application referring to that there is five years' delay in making the application. There is nothing placed on record to substantiate claims under the application. The application contains information which is factually incorrect and as such, the application deserves to be rejected.

5. Perusal of the impugned order shows that the court has not referred to the factual aspects properly and has gone by the statements appearing in the application for condonation of delay

that there is delay of four months and twelve days and further that there is medical certificate, however the medical officer, who had issued the certificate has not been examined and suddenly veered around to allow the application, subject to payment of costs without considering contentions on behalf of the petitioner.

6. The impugned order, having regard to aforesaid circumstances, appears to be a non speaking order. As such, I deem it appropriate that the order be set aside and the matter be remitted for reconsideration by the court below.

7. In the circumstances, impugned order dated 7th April, 2015 on Exhibit-6 in Regular Civil Suit No.38 of 1999 passed by Civil Judge, Junior Division, Bhokardan stands set aside. The matter is remitted for reconsideration to the trial court. It is made clear that all the contentions and submissions are kept open for the parties to be taken.

8. Writ petition as such, is allowed. Rule is made absolute in aforesaid terms.

[SUNIL P. DESHMUKH, J.]