

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9832 OF 2014

M/S. NARAYAN VISHNU DHAMANE, THROUGH PARTNERS
SHRAVAN VISHNU DHAMANE, L.RS. ARUAN SHRAVAN
DHAMANE AND OTHERS.

VERSUS

PRAVIN AMBADAS SHELKE, L.RS. JOYTIBAI @ BALABAI
AND OTHERS

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Advocate for Petitioner : Mr. P B Patil

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CORAM : V.K. JADHAV, J.

Dated: January 29, 2016

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PER COURT :-

1. The petitioners are the original plaintiffs. By way of this writ petition, the petitioners are challenging the order dated 24.6.2014 passed by the learned Civil Judge, J.D., Chalisgaon below Exh.18 in Regular Civil Suit No.38/2011, thereby refusing to condone the delay for bringing the legal representatives of original defendant no.1, on record.

2. Learned counsel for the petitioners submits that, defendant no.1 died on 17.1.2013 and intimation about his death was given on 19.6.2013 to the Court. The petitioner/original plaintiff no.3 is holding GPA for all petitioners and he was looking after the Court litigation. During that period, he was out of station and due to some

natural calamities, he could only return to the head quarter on 26.6.2013. Thereafter, he could not get the required information about the legal heirs of deceased defendant no.1. Consequently, application for taking the legal representatives of deceased defendant no.1 on record was delayed by 173 days. Learned counsel further submits that, there is no deliberate inaction or negligence on the part of the petitioners. The learned Judge of the Trial Court has not considered the same and rejected the application at Exh.18. Learned counsel in order to substantiate his submissions, placed his reliance on a case of Perumon Bhagvathy Devaswom Vs. Bhargavi Amma (Dead) by L.Rs. and others reported in **2009 (2) Mh.L.J. 1.**

3. None appears for the respondents, though duly served. Even notice of final hearing is also given and duly served against them, none appears for respondents.

4. It appears that defendant no.1 died on 17.1.2013. Learned counsel representing the deceased defendant no.1 had filed a purshis in the month of June, 2013 intimating the Court about death of his client. During that period, petitioner/plaintiff no.3, who is looking after the litigation

was out of station. After his return, he could not get the requisite information and, only after getting the information about legal heirs of deceased defendant no.1, filed an application at Exh.18 for condonation of delay alongwith an application at Exh.19 for bringing the legal representatives of deceased defendant no.1 on record. The petitioners/plaintiffs instituted suit for correction of the sale deed and decree of perpetual injunction. The matter relates to immovable property. Delay is not on account of deliberate inaction or negligence on the part of the petitioners/plaintiffs.

5. In view of this, the impugned order dated 24.6.2014 passed below Exh.18 in Regular Civil Suit No.38/2011 is not sustainable and requires to be set aside. Hence, following order is passed.

ORDER

1. Writ Petition is hereby allowed.
2. The impugned order dated 24.6.2014 passed by the learned Civil Judge, J.D., Chalisgaon, below Exh.18 in Regular Civil Suit No.38/2011 is hereby quashed and set aside.
3. Application at Exh.18 in Regular Civil Suit No.38/2011 is hereby allowed.

4. The Trial Court to pass an appropriate order on the pending application at Exh.19.

5. Writ Petition accordingly disposed of. No costs.

(V.K. JADHAV, J.)

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aaa/-