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

WRIT PETITION NO. 5554 OF 2016

Mr. Atmaram Dhau Patil and Ors.

... Petitioners.

V/s.

Mr. Gurunath Padu Patil and Ors.

... Respondents.

Mr. Amol Mhatre for the Petitioners.

CORAM : N.M. Jamdar, J.

04 October, 2016.

Oral Order :-

The Petitioner challenges the order passed by the learned Civil Judge, Junior Division, Bhiwandi dated 18 December 2015, whereby the learned Civil Judge has condoned the delay of approximately nine months and has restored the suit which stood abated for not bringing the heirs of the Defendant on record.

2. The learned Counsel for the Petitioners submitted that merely because in the order the heirs were brought on record does not mean the suit automatically stand restored. He submitted that the Appeal filed by the Petitioners was also disposed of since the suit had abated.

3. In exercise of jurisdiction under Article 227 of the Constitution of India, the Court will have to keep in mind the consequences of the impugned order and the resultant prejudice that is caused to the parties. The jurisdiction is not to correct every error of the Civil Court. In the present case the specific application for restoration of the suit has been filed, which application has been allowed by the learned Judge. The learned Civil Judge has adjudicated the application and has passed the order and it is by a detailed reasoning and it is not by an automatic exercise because the heirs are brought in appeal. As regard if the Appeal of the Petitioner was disposed of only on the ground that the suit does not survive, then it is not an adjudication on merits and if these circumstances do not exist, then it is always open to the Petitioners to revive the appeal or file a fresh appeal for consideration on merits.

4. In the circumstances, no interference is warranted in the impugned order. The Writ Petition is rejected.

(N.M. Jamdar, J.)