

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

WRIT PETITION (ST) NO. 5583 OF 2016

Balkrishnan M.

... Petitioner

v/s

Malati Shamrao Shelke & ors.

... Respondents

Mr.Milan Desai i/by Saeeda Shaikh for the petitioner.

None present for the respondents.

Coram: N.M. Jamdar, J.

Dated: 29 August 2016

P.C.:

Not on board. Taken on production board in view of the *praecipe* filed by the Petitioner.

2 The Petitioner challenges the order passed by the City Civil Court, Mumbai, dated 21 August 2015.

3 Heard learned counsel for the Petitioner.

4 By the impugned order, the learned Judge has allowed the notice of motion and chamber summons for condonation of delay

and has set aside the abatement and has allowed the legal representative of the deceased Plaintiff to be brought on record. The learned Judge found that the suit is for recovery of money and the cause of action survives. In the notice of motion and chamber summons, the reason that is given by the heirs, who are the wife and two children of the deceased Plaintiff is that, they were not aware of the legal proceedings and when they contacted their advocate, the advocate was not available as he had gone on vacation and therefore there is a delay of 135 days. The learned Judge, after considering the reason, balanced the equities by imposition of cost of Rs.3,000/-. This positive use of discretion by the learned Judge cannot be said to be perverse nor could it be said that in no circumstances delay of 135 days by imposition of cost of Rs.3000/- would have been passed by any Court. Considering the nature of the jurisdiction the Petitioner seeks to invoke to, it is not a case for interference in the impugned order. The Petitioner will get full opportunity to defend the suit on merits, as per law.

5 The writ petition is rejected.

(N. M. Jamdar, J.)