

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

CIVIL APPLICATION NO.140 OF 2015

IN

REVIEW PETITION STAMP NO.6306 OF 2015

IN

SECOND APPEAL NO.266 OF 1992

Shri. Jasingrao Ramrao Sawant and others .. Appellants

Versus

Smt. Saraswati Shamrao Dhere and others .. Respondents

And

Dastagir Husain Kavthekar .. Applicant/Petitioner

Mr. N. J. Patil i/by Mr. A. N. Patil for the Applicant/Petitioner.

Mr. S. G. Deshmukh for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 12th AUGUST 2016

PC.

1 The above Civil Application has been filed by the Petitioner abovenamed for condonation of delay of 2 years and 341 days in filing the above Review Petition. The reasons for the delay find a place in the Civil Application, especially in paragraphs 6, 7 and 8 thereof. The above Review Petition has been filed seeking review of the order dated 24.02.2012 passed by this Court, by which order, the above Second Appeal came to be

disposed of. Having regard to the extent of delay, this Court deemed it appropriate to consider whether there is any merit in the above Review Petition so as to condone the said delay of 2 years and 341 days in filing the Review Petition.

2 The above Second Appeal was filed by the original Defendant Nos.1 and 2 against the judgment and order dated 30.01.1992 passed by the Learned Additional District Judge, Kolhapur, by which order, the Regular Civil Suit No.15 of 1983 which was filed for partition and which was dismissed by the Trial Court came to be decreed by the Lower Appellate Court. It seems that during the pendency of the above Second Appeal, the Respondent No.1 Saraswati Shamrao Dhere expired. The original Appellants had filed Civil Application No.1575 of 2011 for bringing the heirs of the Respondent No.1 Saraswati Shamrao Dhere on record. It was the case of the Applicants that the Respondent No.1 had died issueless and therefore the Applicants i.e. the original Appellants were her only heirs. The said Civil Application had earlier come up before a Learned Single Judge of this Court (A. S. Oka, J) on 13.11.2011 when the Learned Judge in view of the case sought to be put up by the Applicants that they are the only heirs of the Respondent No.1 directed them to publish a notice in the local newspaper i.e. "Lokmat" Kolhapur edition was that if there were other heirs, they would come forward.

Accordingly notice was published in daily "Lokmat" on 23.12.2011 disclosing the aforesaid facts. In response to the said public notice, nobody had come forward to claim that he or she is the heir of the Respondent No.1. The Civil Application No.1575 accordingly came to be allowed and resultantly, the Appellants were brought on record as the heirs of the Respondent No.1.

3 The above Second Appeal was thereafter heard on 24.02.2012 and in view of the fact that the Appellants themselves were heirs of Respondent No.1 this Court observed that since there is now no contest the Second Appeal would have to be disposed of on the said basis and has accordingly disposed of the Second Appeal. However, in the said order dated 24.02.2012, it has been observed that the Civil Application No.1575 of 2011 had been filed in view of the fact that one Dastagir Husain Kavthekar had applied for the probate of the alleged Will executed by the Respondent No.1 in his favour. It is further recorded that the said application for probate came to be dismissed by the Learned 4th Joint Civil Judge, Senior Division, Kolhapur by judgment and order dated 24.02.2004 and the matter being not carried further the said judgment and order has become final and binding.

4 The Review Petition is founded on the fact that the Appellants

in the Second Appeal i.e. the Applicants in the said Civil Application had made a wrong statement that they are the only heirs of the Respondent No.1 and that they have also deliberately made a wrong statement as regards the order passed in the probate proceedings having become final and binding. This, the Review Petitioner questions on the ground that the Applicants/Appellants were very well aware of the First Appeal filed by the said Dastagir Husain Kavathekar in this Court against the dismissal of the probate proceedings by order dated 24.02.2004 and that the said Applicants/Appellants are represented in the said First Appeal. The Review Petitioner lays a claim to the property of the Respondent No.1 on the basis of the Will allegedly executed by the Respondent No.1 to the Second Appeal. As indicated above, the application for probate filed by the Review Petitioner has been dismissed by the concerned Court by order dated 24.02.2004 and thereafter the First Appeal filed by the Review Petitioner is pending in this Court. Hence, the rights if any of the Review Petitioner have still not crystallized and are inchoate. The Applicant does not claim to be the heir of the Respondent No.1, but seeks to lay a claim on the basis of the alleged Will executed by the said Respondent No.1. Hence the right if any of the Applicant would arise only in the event of the First Appeal being decided in his favour. Then may be, he may have a competing claim against the heirs of the Respondent No.1 in respect of the property of the

Respondent No.1.

5 In my view, therefore, assuming that an incorrect statement was made on behalf of the Applicants/Appellants that the order dated 24.02.2004 has become final and binding, the same would not make any difference in as much as the Review Petitioner does not claim to be a heir, but claims on the basis of the alleged Will of the Respondent No.1 in respect of which Will the proceedings are pending. Hence apart from the fact that the reasons mentioned in paragraphs 6, 7 and 8 of the Civil Application can hardly justify the huge delay of 2 years and 341 days in filing the Review Petition, in my view, having regard to the aforesaid facts, there is no merit in the above Review Petition. Hence no case for condonation of delay or even on merits is made out. The Civil Application is accordingly rejected.

6 In view of the rejection of the Civil Application, the Review Petition does not survive and to accordingly stand disposed of.

[R.M. SAVANT, J]