

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

**CIVIL APPLICATION NO. 2206 OF 2016
IN
WRIT PETITION NO. 92 OF 2016
WITH
WRIT PETITION NO. 92 OF 2016**

Shantilal Manjaba Bitake

..APPLICANT

VERSUS

Bhanudas Rangu Bitake and Others

..RESPONDENTS

....

Mr. S.L. Bhapkar, Advocate for applicant/petitioner.

Mr. N.V. Gaware, Advocate for Respondent Nos.2, 15-A, B, 22A to 22D, 25-A, C, D,F, 27, 28-A, B, 29, 30, 32,.

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 26th JULY, 2017**

ORDER :

1. By this civil application, the original petitioner prays for condonation of 200 and 201 days delay in bringing the legal heirs of deceased – Respondent Nos. 15 and 22 on record. Mr. Gaware, learned Counsel appears for the legal heirs on notice from this Court.

2. For the reasons stated in the application, same is allowed. Delay is condoned. The legal heirs of deceased – Respondent Nos. 15 and 22 shall be brought on record forthwith.

3. I have considered the submissions of the learned Counsel for the respective sides in the writ petition. The petitioner has put forth prayer clause (C) as under:-

“(C) The judgment and order dated 19th October, 2015 passed by the Ad-hoc District Judge-4, Ahmednagar below Exh. 26 in Civil Misc. Application No. 288 of 2011 be quashed and set aside by allowing the application filed below Exh. 26.”

4. By the impugned order dated 19th October, 2015, the Trial Court has rejected the application Exhibit 26 filed by the petitioner seeking stay to the judgment and decree dated 31st July, 1997 and for staying the Regular Darkhast No. 64 of 2003 in Regular Civil Suit No. 33 of 1989.

5. The record reveals that Regular Civil Suit No. 33 of 1989 was decided by the judgment and decree dated 31st July, 1997 which according to the petitioner is an ex-parte decree. Only after the Regular Darkhast No. 64 of 2003 was set in motion, that the petitioner realised that there was an ex-parte decree and he filed Miscellaneous Application No. 112 of 2005 seeking recalling of the judgment and decree and for condonation of delay alongwith an appeal for seeking setting aside of the ex-parte judgment and decree. The Miscellaneous Application No. 112 of 2005 was dismissed in default on 22nd July, 2011. Naturally, regular civil appeal was not registered. Miscellaneous

Application No. 288 of 2011 which is an application for condonation of delay alongwith an application for setting aside order dated 22nd July, 2011 is still pending. Application Exhibit 26 was rejected in the peculiar facts recorded as above.

6. While issuing notice, this Court (Coram: V.K. Jadhav, J.) in this matter has not granted any interim relief. However, this Court (Coram: S.P. Deshmukh, J.) whiling reissuing notice to the unserved respondents on 11th March, 2016 granted an ad-interim stay to the order of handing over of the possession.

7. Considering that the ad-interim protection granted by this Court has been continued for last about sixteen months, I deem it appropriate to dispose of this petition with a direction to the Appellate Court to decide Miscellaneous Application No. 288 of 2011 as expeditiously as possible and preferably on or before 15th December, 2017.

8. In the light of the above, this petition is disposed of. Ad-interim protection granted on 11th March, 2016 shall continue till the decision in Miscellaneous Application No.288 of 2011 or till 15th December, 2017, whichever is earlier. The Appellate Court shall decide the Miscellaneous

Application No. 288 of 2011 on its own merits on or before 15th December, 2017. The litigating sides shall refrain from seeking adjournments on unreasonable and trivial ground. The Appellate Court would be at liberty to impose costs if such instances for seeking adjournment are noticed.

9. The litigating sides who have appeared before this Court shall appear before the Appellate Court in Miscellaneous Application No. 288 of 2011 on 19th August, 2017. In the event the Appellate Court notices that any of the respondents are not served, it may accordingly issue notices.

(RAVINDRA V GHUGE, J.)

SSD