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

**CIVIL APPLICATION NO. 2945 OF 2014
IN/WITH
REVIEW APPLICATION (ST.) NO. 5914 OF 2014
IN
CIVIL REVISION APPLICATION NO. 1386 OF 2001**

Sulochanabai Badrinarayan Pendabhaje,
deceased, thr. her L.Rs.

- 1A. Pushpabai Dhordiram Saikar,
Age: 50 years, Occu: Household,
R/o. Chinchwad, Pune
- 1B. Ratnamala Haribhau Shrisagar,
Age: 45 years, Occu: Household,
R/o. Bhingar, Ahmednagar
- 1C. Mangal Chandrakant Chandwadkar,
Age: 40 years, Occu: Household,
R/o. Nashik, Dist. Nashik
- 1D. Bharti Hiranman Chaudhari,
Age: 35 years, Occu: Household,
R/o. Dondhaicha, Dhulia,
- 1E. Ravindra s/o Badrinarayan Pendabhaje,
Age: 30 years, Occu: Business,
R/o. Mangal Gate, Ahmednagar,

No.1A to 1D, thr. Power of Attorney
Shri Ravindra S/o Badrinarayan Pendabhaje,
Age: 30 years, Occu: Business,
R/o. Mangal Gate, Ahmednagar

..APPLICANTS

VERSUS

- 1. Laxman Kashinath Ingle,
died, thr. L.Rs.
- 1(a). Sau. Nalini Subhash Kachure,
Age: 40 years, Occu: Household,
R/o. C/o. Raghunath Kashinath Nandgilikar,
R/o. Bhuas Peth, Pos Hum (dismissed)
- 1(b). Sau. Alka Shriram Shirsagar,
Age: 35 years, Occu: Household,

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R/o. C/o. Deolgaon Raja,
General Agent, Commission Agent,
Dist. Jalna

- 1(c). Sou. Jayshree Sunil Karpe,
Age: 30 years, Occu: Household,
R/o. Ravwareth, Junnar,
Dist. Pune
2. Gokul s/o Kashinath Ingale,
deceased, thr. L.Rs.
- 2(a). Pravin s/o Gokul Ingale,
Age: 25 years, Occu: Business,
R/o. Kondya Mama Chowk, Mangal Gate,
Ahmednagar
- 2B. Sau. Manik Harishchandra Hazare,
Age: 35 years, Occu: Household,
R/o. C/o. Satish Chinchkar,
Plot No. 19, Samta Park,
Shahapuri, Mu. Post. Satara,
Tq. & Dist. Aurangabad
- 2C. Sau. Shalini Ramesh Kale,
Age: 28 years, Occu: Household,
R/o. Kolhar (Bhagwati),
Tq. Shrirampur, Dist. Ahmednagar
- 2D. Sou. Rajni Krishna Moghale,
Age: 25 years, Occu: Household,
R/o. Pipeline Road, Hudco,
Ahmednagar
- 2E. Mohini Gokul Ingale,
deceased
3. Sushilabai Laxman Ingale,
deceased
4. Rajendra Laxmanrao Ingale,
Age: 50 years, Occu: Business,
R/o. Kondiamama Chowk,
Mangal Gate, Ahmednagar (deleted)
5. Surendra Laxmanrao Ingale,
Age: 51 years, Occu: Business,
R/o. House No. 1332,
Kondiamama Chowk,
Mangal Gate, Ahmednagar

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6. Prakash Gokul Ingale,
Age: 48 years, Occu: Business,
Nirmal Chambers, Lal Taki,
R/o. Kondiamama Chowk,
Mangal Gate, near Rajendra Hotel,
Ahmednagar
7. Pramod Gokul Ingale,
Age: 46 years, Occu: Business,
R/o. Nirmal Chambers, Lal Taki,
Kondiamama Chowk,
Mangal Gate, near Rajendra Hotel,
Ahmednagar
8. Sharad Mansukhlal Mutha,
Ge: 62 years, Occu: Business,
R/o. 82, Manik Nagar,
Pune Road, Ahmednagar
9. Narayan Prasad Mishra,
Age: Major, Occu. Business,
R/o. Nirmal Chambers, Lal Taki,
Kondiamama Chowk,
Mangal Gate, near Rajendra Hotel,
Ahmednagar
10. Sau. Sushilabai Shankrao Kale,
deceased
11. Ashok Shankaro Kale,
Age: 50 years, Occu: Service,
R/o. Yashwant Colony,
Ahmednagar
12. Sau. Pushpabai Ashok Kale,
Age: 46 years, Occu: Household,
R/o. Yashwant Colony,
Ahmednagar
13. Rajiv Gulshan Bindra,
Age: Major, Occu: Business,
R/o. Lal Taki Behind Nirmal Chambers,
Ahmednagar
14. Vinod Ramswarup Mehta,
Age: Major, Occu: Business,
R/o. Ganj Bazar, Ahmednagar

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15. Shivling Sonu Choudhari,
Age: 52 years, Occu: Business (deleted)
16. Shankar Vithoba Chaure,
Age: Major, Occu: Business
17. Harishchandra Savalram Hazare,
Age: 45 years, Occu: Service
18. Shankar Sonyabapu Murtundagar,
Age: 40 years, Occu: Service,
R/o Sandesh Nagar, Shriram Chowk,
Vasant Rekdi, Plot No. 413,
Ahmednagar
19. Sitaram Bhagwan Khandelwal,
Age: 40 years, Occu: Business,
R/o. Anand Nagar, Gulmohar Road,
Plot No. 3, Ahmednagar
20. Khemchandji Somalal Walani,
Age: 50 years, Occu: Business,
R/o. Mangal Road, Kondimama Chowk,
Ahmednagar (deleted)
21. Krishnabai Bhikoba Kalbhir,
deceased (deleted)
22. Prabhakar Shiankarsingh Pardeshi,
Age: 30 years, Occu: Service
23. Tukaram Ramrao Kupade,
deceased (deleted)
24. Kanaiyalal Mansukhalal Gandhi,
deceased (deleted)
25. Narayan Tukaram,
R/o. Sharangaon, Gulmohar Road,
Ahmednagar
26. Nathuramji Rajmal Mutha,
deceased (deleted)
27. Sou. Harbansakaur Narendrapoalsingh
Kanthari, deceased (deleted)
28. Rajendra Mansingh Dhuppad,
Age: Major, Occu: Business (deleted)

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29. Sou. Mina Ajit Surpuria,
deceased (deleted)

30. Vinod Ramswarup Mehta,
(deceased) (deleted)

Nos. 27 to 30 R/o. Nirmal Chambers,
Lal Taki Road, Ahmednagar

..RESPONDENTS

Ms Sabahat T. Kazi, Advocate for applicants;
Mr R. R. Sancheti, Advocate for respondent No.8

CORAM : N.W. SAMBRE, J.

DATE : 31st July, 2017

ORAL ORDER

Heard.

2. There is a delay of 1164 days in preferring Review Application in Civil Revision Application, which is opposed by the learned Counsel appearing on behalf of respondent No.8 on the ground that the same is not properly explained.

3. Considered the cause cited and also the events that took place, which prompted filing of civil revision application. In my opinion, there is sufficient cause disclosed for condoning the delay. As such, the delay stands condoned. Civil application No. 2945 of 2014 stands allowed.

4. At the request of learned Counsel for the applicants, leave is granted to carry out amendment in the prayer clause of civil application incorporating the prayer for withdrawal of Civil Revision Application No. 1386 of 2001 upon reviewing the order dated 25th November, 2010.

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5. Liberty is also granted to present applicants to incorporate the pleadings for questioning the order dated 20th November, 2013, passed below Exhs. 1 and 238 in Special Civil Suit No. 602 of 1988.

6. One Kashinath Bhivsen Ingale died in 1969, whose daughter Sulochana along with other legal representatives filed Special Civil Suit No. 602 of 1988 for partition and separate possession of the suit properties. In the said suit, present applicants, on 4th September, 2000, since failed to remain present and adduce evidence, the suit came to be dismissed on 5th September, 2000 for want of prosecution, which order was confirmed by this Court in Civil Revision Application No. 1386 of 2001, on 25th November, 2010.

7. Misc. Civil Appeal No. 103 of 2005 came to be filed by the applicants ignoring the order in civil revision application, questioning the order of dismissal of the suit, which came to be allowed by the learned District Judge, Ahmednagar on 2nd August, 2008.

8. After the suit came to be restored pursuant to the order passed in appeal, defendant No.9 moved an application Exh.238 for dismissal of the suit in view of the order passed by this Court in Civil Revision Application No.1386 of 2001. As such, the Civil Court again dismissed the suit vide order dated 20th November, 2013.

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9. As such, this civil application for review of the order dated 25th November, 2010, passed by this Court in Civil Revision Application No. 1386 of 2001 and for setting aside the order dated 20th November, 2013, passed by the learned 5th Joint Civil Judge Senior Division, Ahmednagar, below Exhs. 1 and 238, whereby restored suit came to be again dismissed in view of order in Civil Revision Application No. 1386 of 2001.

10. Learned Counsel appearing on behalf of the applicants submits that the order of this Court needs to be reviewed in view of the fact that the suit was dismissed for want of prosecution. According to her, the order of dismissal of the suit is confirmed by this Court in civil revision application, without considering the genuine cause narrated by the applicants for not attending the proceedings at the time when suit was called out for hearing. She would urge that prayer of the applicants for restoration of the suit, moved on the same date i.e. 5th September, 2010, vide Exh. 214 is also rejected by the Court below, which issue is also not considered in the judgment under review. She would then urge that the order passed in civil revision application be reviewed and the revision be permitted to be withdrawn as the order of the learned appellate Court restoring the suit will govern the proceedings where the suit is also ordered to be restored.

11. She would then urge that if the order passed in Civil Revision Application No. 1386 of 2001 is reviewed, revision be permitted to be withdrawn with liberty to pursue the matter in Misc. Civil Appeal No. 103 of 2005, so that the suit may proceed.

12. Learned Counsel appearing on behalf of the respondent-defendant No.9 would oppose the claim on the ground that there is no case for review and the present application deserves to be rejected as (a)the inordinate delay has not been explained and (b) the order in Misc. Civil Appeal No. 103 of 2005, passed by the learned District Judge, Ahmednagar is in ignorance of the order passed by this Court in civil revision application.

13. Considered rival submissions.

14. In my opinion, the order passed by this Court in Civil Revision Application No. 1386 of 2001 on 25th November, 2010 calls for a review, as this Court has ignored the fact that the applicants have shown their bona fides by moving application for restoration on very same day i.e. on 5th September, 2000 and have assured the Trial Court to work out the matter, which request was turned down by the Trial Court.

15. Apart from above, it appears that against an order of dismissal of the suit for partition, whether the civil revision application was maintainable or not, is not examined by this Court.

16. Plain reading of Section 115 of the Code of Civil Procedure makes it clear that against the order of dismissal of suit for want of prosecution, revision is not maintainable as had the order of dismissal of suit would not have been passed, the suit would have been continued. Hence, the suit would not have been disposed off finally as provided in proviso to sub-section (1) and sub-section (2) of Section 115

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of the Code of Civil Procedure.

17. Apart from above, it is required to be taken note of the fact that the claim of the applicants is for partition and separate possession of the suit properties, being legal representatives of deceased Kashinath.

18. In view thereof, dismissal of the suit will cause a great prejudice to the present applicants as their rights are not evaluated based on the merits of the matter.

19. As such, though the learned Counsel for respondent No.8 has opposed the application for review, in my opinion, for the reasons aforesaid, same needs to be allowed, subject to payment of costs of Rs.25,000/- to be deposited in the Trial Court within a period of eight weeks from today.

20. The learned Trial Court shall permit the defendants, who have contested the proceedings to withdraw the costs on pro-rata basis.

21. As the order passed by this Court in Civil Revision Application No. 1386 of 2001 on 25th November, 2010, rejecting the revision is reviewed, the said order is set aside. The Civil Revision Application stands restored to the file of this Court.

22. In the interest of justice, the applicants are permitted to withdraw the said civil revision application, with liberty to canvass Misc. Civil Appeal No. 103 of

2005, decided by the learned appellate Court on 2th August, 2008.

23. As this Court has already set aside its order dismissing the Civil Revision Application No. 1386 of 2001 and has permitted withdrawal of the said revision, the order passed below Exhs. 1 and 238 on 20th November, 2013, by learned 5th Joint Civil Judge Senior Division Ahmednagar, dismissing Special Civil Suit No. 602 of 1988, in view of dismissal of revision by this Court, is also hereby quashed and set aside.

24. As a consequence, the suit stands restored to the file of learned Civil Judge Senior Division, Ahmednagar, who shall proceed to decide the same on its own merits as the applicants-plaintiffs have assured this Court that they shall not seek any adjournment in the matter and shall co-operate the said Court in expeditious disposal of the suit.

25. The aforesaid order is passed in the interest of justice as the applicants are females, who are seeking partition of the suit properties, being legal representatives of deceased Kashinath and whose right to claim partition of the suit properties is turned down on the technicalities, without evaluating their entitlement in law to the partition.

26. The learned Civil Judge Senior Division, Ahmednagar shall decide the suit without being influenced the observations made herein.

27. If the appellants fail to co-operate the Trial Court in disposal of suit, the Trial Court will be at liberty to pass appropriate order without being influenced by

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this order.

With the above observations, present Review Application stands disposed of.

(N.W. SAMBRE, J.)

sjk