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

**WRIT PETITION NO. 10339 OF 2014
WITH
CIVIL APPLICATION NO.14338 OF 2017
IN
WRIT PETITION NO.10339 OF 2014**

Raosaheb s/o Narayan Gate
deceased through his L.Rs.

1A. Venubai w/o Raosaheb Gate,
Age: 65 years, Occ: H.H.
R/o. Kati, Tq. Tuljapur,
Dist. Osmanabad.

1B. Dattatraya s/o Raosaheb Gate,
Age: 45 years, Occ: Agri.,
R/o. As above.

1C. Indrayani w/o Popat Dhumal,
Age: 43 years, Occ: Agri.,
R/o. As above.

1D. Shrihari s/o Raosaheb Gate,
Age: 40 years, Occ: Agri.,
R/o. As above.

..PETITIONERS

VERSUS

1. Venkatesh s/o Vithal Tuljapurkar
(Died)

2. Vasant s/o Vithal Tuljapurkar,
Since deceased through his L.Rs.

2A. Charudatta s/o Vasant Tuljapurkar,
Aged: 46 years, Occ: Service,
R/o. D-Quarters, Ground Floor,
Ujani Colony, Opp. District
Central Co-operative Bank

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Building, Kamtha Naka, Solapur,
Tq. & Dist. Solapur.

- 2B. Chandrakant s/o Vasant Tuljapurkar,
Aged: 42 years, Occ: Service,
R/o. D-Quarters, Ground Floor,
Ujani Colony, Opp. District
Central Co-operative Bank
Building, Kamtha Naka, Solapur,
Tq. & Dist. Solapur.
- 2C. Nanda s/o Vasant Tuljapurkar,
Aged: 36 years, Occ: Service,
R/o. D-Quarters, Ground Floor,
Ujani Colony, Opp. District
Central Co-operative Bank
Building, Kamtha Naka, Solapur,
Tq. & Dist. Solapur.
- 2D. Shakuntalabai w/o Vasant Tuljapurkar,
Age: 66 years, Occ: Household,
R/o. D-Quarters, Ground Floor,
Ujani Colony, Opp. District
Central Co-operative Bank
Building, Kamtha Naka, Solapur,
Tq. & Dist. Solapur.
- 2E. Prema d/ Vasant Tuljapurkar,
Aged: 50 years, Occ: Household,
R/o. D-Quarters, Ground Floor,
Ujani Colony, Opp. District
Central Co-operative Bank
Building, Kamtha Naka, Solapur,
Tq. & Dist. Solapur.
- 2F. Kittu d/o Vasant Tuljapurkar,
Aged: 45 years, Occ: Household,
R/o. D-Quarters, Ground Floor,
Ujani Colony, Opp. District
Central Co-operative Bank
Building, Kamtha Naka, Solapur,
Tq. & Dist. Solapur.

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2G. Supriya d/o Vasant Tuljapurkar,
Aged: 42 years, Occ: Household,
R/o. D-Quarters, Ground Floor,
Ujani Colony, Opp. District
Central Co-operative Bank
Building, Kamtha Naka, Solapur,
Tq. & Dist. Solapur. ..RESPONDENTS

Ms R. M. Mahale, Advocate h/f S. S. Choudhari,
Advocate for petitioner

CORAM : NITIN W. SAMBRE, J.

DATE : 29th NOVEMBER, 2017

ORAL ORDER :

Since none appears for the respondents,
Civil Application No. 14338 of 2017 stands allowed,
in terms of prayer clause (B).

2. Amendment be carried out forthwith.

3. In Regular Civil Suit No. 19 of 1987 filed
by the petitioner, an application for bringing
legal heirs of defendant, who claimed to have died
during the pendency of the suit was moved. The
application for bringing legal heirs of said

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defendant was not moved in limitation. As a consequence, the said suit abated. On 6th April, 1994 the application for condonation of delay came to be filed for bringing legal heirs of defendant on record, which was rejected on 13th March, 1995, which was subject matter of Appeal from Order No. 47 of 1995. As there was amendment to the clause of pecuniary jurisdiction, said appeal from order, which was transferred to the Court of District Judge, Osmanabad was renumbered as Misc. Civil Appeal No.82 of 2002. The said appeal came to be dismissed for want of prosecution on 2nd December, 2006, restoration of which is sought by filing Misc. Civil Application No.40 of 2009 along with Misc. Civil Appeal No.82 of 2002.

4. Said Misc. Civil Application No.40 of 2009 was for condonation of delay, came to be rejected. As such, this petition.

5. This Court noticed that the delay of 2 years 11 months and 11 days was refused to be

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condoned by the impugned order, so as to entertain Misc. Civil Appeal No. 82 of 2002. So as to test bonafides of the petitioner, an amount of Rs.7500/- towards cost was directed to be deposited, which is already deposited in this Court.

6. Heard learned Counsel for the petitioner. The respondents though served, none appears.

7. The petitioner has tried to explain the delay of 2 years on the count of his migration for earning livelihood and communication gap between him and his lawyer. The said cause is not controverted by the respondents by appearing before this Court.

8. In view thereof and for the reasons disclosed in support of condonation of delay, the order passed below Exhibit-1 in Misc. Civil Application No. 40 of 2009 on 18th March, 2014 by the Adhoc District Judge, 1 Osmanabad is hereby set aside. The delay caused in preferring Misc. Civil

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Appeal No.82 of 2002 of 2 years 11 months and 11 days stands condoned.

9. Misc. Civil Appeal No.82 of 2002 be heard by the District Judge on merit.

10. An amount of Rs.7500/- deposited towards cost be remitted before learned District Judge, who is dealing Misc. Civil Appeal No. 82 of 2009, to which present respondents will be entitled to withdraw in proportionate as shall be decided by learned District Judge.

11. The writ petition stands allowed in above terms.

(NITIN W. SAMBRE, J.)

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