

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

WRIT PETITION NO.4344 OF 2015

Sadashiv Mukund Tendulkar and ..Petitioners.
Ors.

Vs
Vijay Vasant Tendulkar and Ors. .. Respondents

Mr. E.A.Sasi, Advocate for Petitioners.
Mr.Sunil Kale i/b Mr.Yashodhan Gavankar, Advocate for
Respondents no.1 to 4.

CORAM : R.G.KETKAR,J.
DATE : 31/01/2017

PC:

1. Heard Mr. E.A.Sasi, learned counsel for the petitioners and Mr.Sunil Kale, learned counsel for respondents no. 1 to 4 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 27.1.2015 passed by the learned Civil Judge, Senior Division, thane in Misc. Application No. 206 of 1991. By that order, the learned trial Judge rejected the application made by the petitioners for condoning the delay of 11 months in filing restoration application.

3. Mr.Sasi submitted that Special Civil Suit No.249 of 1983 filed by the petitioners was dismissed in default on 22.8.1990. The plaintiffs filed application on 25.7.1991 for condoning delay of 11 months in filing the application for restoration. He has

invited my attention to that application and in particular paragraphs 2 to 4 thereof. He has also invited my attention to the evidence adduced on their behalf by Satish Sawant, Constituted Attorney for the plaintiffs, as also his cross-examination. He submitted that as the petitioners have not made out sufficient cause for condonation of delay, they may be permitted to withdraw the application with liberty to file fresh application giving requisite details and making out sufficient cause for condoning the delay.

4. Mr. Kale submitted that in case the Court is inclined to grant such liberty, all contentions of the respondents may be expressly kept open and it may be clarified that this Court has not stayed the execution proceedings in Execution Application No.100 of 2013.

5. In view thereof, on the motion made by Mr.Sasi, Misc. Application No. 206 of 1991 is permitted to be withdrawn with liberty as prayed for. Grant of liberty shall not be construed as an expression of merits either way. All contentions of respondents no.1 to 4 including maintainability of such application are expressly kept open. By way of abundant caution, it is clarified this Court has not stayed proceedings of Execution Application No. 100 of 2013. In view thereof, this Petition stands disposed of. Order accordingly.

(R.G.KETKAR, J.)