

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

**CIVIL APPLICATION NO. 1508 OF 2017
IN
WRIT PETITION NO. 7570 OF 2004**

M/s. Ramchandra Bhimaji & Co. & Ors. .. Applicants

In the matter between

Vithal Jaisingh Khilare & Ors. .. Petitioners

v/s.

Madhav Narayan Modak & Ors. .. Respondents

Mr. Ashok Tajane for the Applicants / original petitioners

Mr. Prathamesh Bhargude for respondent no.3

Mr. Dilip Bodake for respondent no.5

**CORAM : M.S. SANKLECHA, J.
DATED : 4th SEPTEMBER, 2017**

PC.

1. This Civil Application has been taken out in a petition of the year 2004 challenging an order dated 2nd February, 2002 passed in appeal by the Additional District Judge, Pune upholding the order dated 29th August, 1998 rejecting an application for restoration of the petitioner's suit dismissed for default on 16th June, 1997. The applicants are the purchasers of a suit property, which is a subject matter of dispute in Regular Civil Suit No.583 of 1992, which stood

dismissed on 16th June, 1997.

2. The applicants herein have purchased the suit property on 7th March, 2011 by a registered deed of conveyance from the original petitioners. The applicants seek to be substituted for the original petitioners so as to prosecute the present petition.

3. In this application, there is no reason stated as to why the applicants have not moved this application for a period of over six years after having stepped into the shoes of the original petitioners. Mr. Tajane, learned Counsel appearing for the applicants who also appears for the original petitioners states that the similar application for being substituted for the original applicants, was made by the petitioners herein in a Civil Revision Application No.64 of 2011 by a Civil Application No.670 of 2012 therein and it was allowed by order dated 13th September, 2012 in respect of purchase of property from persons other than the original petitioners herein. On the same set of facts, it is submitted that this civil application should also be allowed.

4. The Civil Application No.670 of 2012 allowed in Civil Revision

Application No.64 of 2011 did not suffer from laches / inordinate delay as in the present facts. This is clearly evident from the fact that the applicants had moved its Civil Application in 2012 immediately after having purchased the disputed property therein in 2011. In this case, they have not moved the Civil Application for over 6 years and without any attempt even to explain the delay. In the above view, this Civil Application cannot be entertained.

5. However, Mr. Tajane, learned Counsel appearing for the applicants states that in any case he also appears for the original petitioners. Thus, the substitution is only formal. I do not accept the above submission. However, there is no difficulty in hearing the original petitioners on merits of the petition as represented by Mr. Tajane. However, this Civil Application for substitution cannot be entertained.

6. Accordingly, the Civil Application is dismissed. No order as to costs.

(M.S. SANKLECHA, J.)