

2 The petitioner herein had filed Civil Miscellaneous
Application No.69 of 2001 in the Court of 2nd Joint Civil Judge
Senior Division, Sangli seeking probate on the basis of the Will of the
deceased testatrix i.e. Smt. Chandrawwa Satyappa Koli. The

petitioner had contended that he happens to be one of her relatives. The respondents were also relatives of the deceased testatrix. According to the petitioner, it was out of love and affection that she had bequeathed her property in favour of the applicant. The respondents in the said application were prosecuting the said proceedings through General Power of Attorney given in favour of Babu Ganpati Koli. During the pendency of the proceedings, the general Power of Attorney, Babu Koli had expired. After demise of the power of attorney-holder, the respondents had not diligently prosecuted the said proceedings. The learned 2nd Joint Civil Judge, Senior Division had therefore held that the applicant has proved the execution of the Will and was entitled for probate and therefore by an order dated 20th October, 2014, the application seeking probate was allowed.

3 Smt. Tipawwa Ramanna Koli had then filed an application on 16th February 2008 i.e. practically after 940 days seeking restoration of the proceedings alongwith an application

seeking condonation of delay. In the application seeking condonation of delay, the applicant therein i.e. the present respondent had specifically contended that during the pendency of the proceedings, Laxman Madappa Koli had expired and his legal heirs had to be brought on record. Similarly, Smt. Renukabai Ramchandra Kamble, who was the original respondent had also expired. Smt. Nenewwa Amgonda Koli and Smt. Putalabai Bhimanna Koli, who were the original respondents had expired. It was also contended that she is a rustic villager, who is illiterate. She herself is living by working as a housemaid and had approached an advocate. However, she was not apprised of the proceedings and the legal necessity to prosecute the said proceedings and therefore there was delay. The said application was opposed by the original applicant and after hearing both the parties, the learned Civil Judge, Senior Division, Sangli had allowed the application seeking restoration of the proceedings and had directed the applicant i.e. the present respondent no.1 to deposit a cost of Rs.500/-. The order was passed on 7th March, 2013. Hence, this writ petition.

4 It is the contention of the petitioner that in fact the probate had concluded and therefore an application seeking restoration was not maintainable and the respondents ought to have filed an appeal against the said order. It is vehemently contended by the learned counsel for the petitioner that it cannot be said that the order was passed exparte because the respondent was fully aware of the fact that the general power of attorney had expired and she had also approached the concerned advocate and after pursuing the matter to the best of her efforts, therefore it cannot be said that this is an ex-parte order. Learned counsel for the respondent no.1 has also vehemently submitted that in such cases the status of the applicant needs to be taken into consideration in the interest of justice, she happens to be rustic villager. More than three respondents had expired during the pendency of the said proceedings and at the most, it can be said that the respondent was misguided by the advocate and since she was a laymen, she could not prosecute the case diligently.

5 Taking into consideration the submission advanced by the learned advocate and the facts of the case in particular, this court is of the opinion that the order passed by the learned Civil Judge, Senior Division, Sangli dated 7th March, 2013 calls for no interference. The original applicant i.e. the present petitioner as well as the respondent are the relatives of the deceased testators. The respondent cannot be denied of her right to contest the matter on merits. In view of this, the petition stands dismissed.

6 The learned Civil Judge, Senior Division, Sangli is hereby directed to conclude the probate proceedings as far as possible by 30th July, 2018.

7 Needless to say that the interim relief granted by the order dated 12th March, 2014 is vacated.

8 The petition stands disposed off. It is made clear that this Court has not expressed any opinion on the merits of the matter

except the condonation of delay. All contentions of the respective parties are kept open.

(*Smt. Sadhana S. Jadhav*, J)