

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10485 OF 2012

Vishwanath K. Virkar
(since deceased) through his LR
Anil V.Virkar & Others .. Petitioners.
v/s.
The State of Maharashtra & Others .. Respondents.

Mr. Karan Bhosale i/b. Neha Bhosale, for the Petitioners.
Mr. Prathamesh Bhargude i/b. Mr. Sugandh Deshmukh, for Respondent
Nos. 3 to 6.
Mr. Pradeep Patil with Mr. Sachin Bagal, Mr. Nilesh Masurkar i/b. Mr.
Pravin Gole, for Respondent No.7.

CORAM: M.S.SANKLECHA, J.

DATE : 13th SEPTEMBER, 2017.

P.C:-

This Petition under Article 227 of the Constitution of India, challenges the order dated 20th April, 2012 passed by the Ad-hoc District Judge, Satara. By the impugned order, the Petitioner's application for condonation of delay of 36 years 8 months and 18 days in preferring appeal from the Judgment and Decree dated 25th April, 1974, was rejected.

2 The grievance of the Petitioners is that the impugned order is a non-speaking order inasmuch as it does not consider its primary submission that they came to know about a Judgment and Decree dated 25th April, 1974 being passed against Petitioner him on 15th December, 2010 i.e. only when the decree was being executed. Besides, not

considering the affidavits filed by the some Respondents herein who are supporting the Petitioner's case.

3 The aforesaid grievance of the Petitioners is considered by the impugned order as it renders a finding that, the Judgment and Decree dated 25th April, 1974, was not an ex-parte decree. Further, application as filed by the Petitioners itself specifically states that Petitioner No.1 i.e. Original Defendant No.3 was served with the proceedings and he chose not to file his written statement.

4 Further, the Trial Court in its Judgment and Decree dated 25th April, 1974 in para No.5 specifically records that Petitioner No.2 i.e. original Defendant No.5 has filed written statement and the same as taken into consideration at the time of passing a Judgment and Decree dated 25th April, 1974. Once the impugned order records a finding of fact that the Petitioner were aware of the suit, leading to the Judgment and Decree dated 25th April, 1974 by specifically stating it was not ex-parte, the grievance is unsustainable. The basis of the Petitioner's contention that he learnt of the order dated 25th April, 1974 only on 15th December, 2012 falls to the ground.

5 In the above view, the impugned order calls for no interference in the exercise of my supervisory jurisdiction under Article 227 of the Constitution of India.

6 Accordingly, **Petition dismissed.** No order as to costs.

(M.S.SANKLECHA,J.)