

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO. 11944 OF 2017**

|                                   |                |
|-----------------------------------|----------------|
| Shridhar Shivmath Nirbhavne & Ors | ...Petitioners |
| <i>Versus</i>                     |                |
| Vijay Nivrutti Nirbhavne & Ors    | ...Respondents |

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**Mr Makrand Bakore**, *for the Petitioners.*  
**Mr Rajan K Malkani**, *for the Respondents.*

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**CORAM: G.S. PATEL, J**  
**DATED: 16th November 2017**

**PC:-**

1. Heard.

2. The challenge is to an order in revision of the Appellate Bench of the Small Causes Court. That order was passed on 19th July 2017 and it allowed the revision. It appears that the original Defendant 1(A) Ghanshyam died during the pendency of the suit. His heirs were not impleaded and the suit was came to be dismissed. The Plaintiffs then filed a Marji Application No.83 of 2014 to restore the suit. They also filed an application as Exhibit-6 to condone the delay in impleading the legal heirs of Defendant No.1(A) as the Defendants to the suit. The difficulty is that there was no application ever made to amend the Marji restoration application and to add the heirs of Defendant

No.1(A) to that restoration application. Mr Bakore is correct that without that restoration application being amended, served and heard, the rest, i.e. the application for restoration of the suit, condonation of delay and for amendment of the suit could not proceed.

3. On behalf of the Plaintiff a statement is made that an appropriate application to amend the Marji application will be filed within a period of two weeks from today. This will then be served and be decided on its merits. In view of this, the impugned order is required to be set aside. It is clarified that the amendment application as also the Marji application and Exhibit-6 will now be heard on their own merits uninfluenced by the previous order.

4. The Petition is disposed of in these terms.

5. Affidavit of service is taken on file.

**(G. S. PATEL, J.)**