

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

WRIT PETITION NO. 8399 OF 2016

Yadu Laxman Jambhale and Ors	..Petitioners.
Vs	
Bapusaheb Krishnaji Waghmale, since deceased through heirs and L.Rs.	.. Respondents

Mr.Pradip J. Thorat, Advocate for Petitioners.

CORAM : R.G.KETKAR,J.
DATE : 10/01/2017

PC:

1. Heard Mr.Pradip Thorat, learned counsel for the petitioners at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 31.8.2015 passed by the learned 3rd Jt. Civil Judge, Jr.Dn., Satara in Civil Misc. Application No. 56 of 2012. By that order, the learned trial Judge allowed the application made by the respondent-plaintiff for condoning the delay in filing application for restoration of Regular Civil Suit No.547 of 1982 subject to payment of costs of Rs. 1000/- to the petitioners herein.
3. In support of this petition, Mr. Thorat submitted that the plaintiff had instituted the suit for specific performance of contract as also for possession of the suit property. The suit was dismissed in default on 7.1.2012. The application for restoration was filed on 6.8.2012. He has taken me through the application

for condonation of delay and submitted that no sufficient cause is made out. In fact, no justifiable ground is given by the plaintiff for condonation of delay as also for restoration of the suit.

4. I have considered the submissions advanced by Mr.Thorat. I have also perused the material on record. As noted earlier, the petitioners had instituted suit for specific performance of contract as also for possession of the suit property on 18.10.1982. On 7.1.2012, as the plaintiff and his advocate were absent, the suit was dismissed in default. Immediately on 6.8.2012, the plaintiff filed application for restoration. With the assistance of Mr. Thorat, I have perused the averments made in the application. The learned trial Judge has referred to various decisions and has accepted the reasons given by the plaintiff for condonation of delay as also his absence on 7.1.2012. In my opinion, though the suit was instituted in the year 1982, it was dismissed in default almost after 40 years. The delay does not enure to the benefit of the plaintiff. In view thereof and for the reasons stated in the impugned order, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed. The learned trial Judge is requested to decide the suit as expeditiously as possible and in any event, on or before 31.12.2017.

(R.G.KETKAR, J.)