

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

WRIT PETITION NO. 934 OF 2017

Ganesh Ghisulal Soungar

.. Petitioner

v/s.

Dr. Vinay Mahadev Chitale & Anr.

.. Respondents

Mr. A.Y. Sakhare, Senior Counsel a/w Mr. Joel Carlos for the
petitioner

Mr. Niranjan A. Mogre for respondent no.1

CORAM : M.S. SANKLECHA, J.

DATED : 22nd AUGUST, 2017

PC.

1. This petition is moved for urgent admission and reliefs.
2. This petition under Article 227 of the Constitution of India challenges the order dated 13th October, 2016 passed by the 3rd Addl. Judge, Small Causes Court and Civil Judge, Senior Division, Pune. By the impugned order dated 13th October, 2016 the respondent's (original plaintiff's) application for condonation of delay in filing the application for setting aside the abatement order dated 24th April, 2014 (resulting in dismissal of the suit) was allowed.
3. Mr. Sakhare, learned Senior Counsel appearing for the

petitioner states that the application to set aside the abatement order consequent to the impugned order is now listed for hearing on 28th August, 2017. Therefore, the urgency.

4. The impugned order has condoned the delay *inter alia* after recording the fact that the suit came to be dismissed on account of abatement because of bailiff's report to the Court that both plaintiffs i.e. respondent nos. 1 and his father had passed away, even when respondent no.1 is very much alive. Therefore, the dismissal of the suit itself has proceeded on gross error on account of bailiff's report. The respondent learnt about the dismissal of the suit on account of abatement only when enquiries were made, consequent to coming to know, that the petitioners are attempting to sell the suit property.

5. In the above view, the Court has in the facts of the case arising before it, exercised its discretion in condoning the delay keeping in mind that the functions of the Court is to do substantial justice between the parties and in matter such as this, a liberal approach is to be adopted. The discretion exercised in the impugned order does not call for any interference under Article 227 of the Constitution of

India.

6. Accordingly, the Writ Petition is dismissed. No order as to costs.

(M.S. SANKLECHA, J.)