

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4283 OF 2015

SARJABAI DILIP MULANGE AND ANOTHER
VERSUS
KANIRAM GOBA PAWAR SINCE DECEASED THR. LRS.
VIMALBAILKANIRAM PAWAR AND OTHERS

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Advocate for Petitioners : Mr. Q. R. Syed h/f Mr. G.R. Syed
Advocate for Respondent No.4 : Mr. A.D. Hande
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CORAM : V. K. JADHAV, J.
DATED : 7th FEBRUARY, 2018

PER COURT:-

1. By consent of learned counsel for the parties, heard finally at admission stage.
2. Being aggrieved by the order dated 25.10.2013 passed by the learned District Judge-3, Nanded below Exh.1 in Misc. R.J.E. No. 50 of 2011, the original applicants have preferred this writ petition.
3. The petitioners have instituted R.C.S. No. 23 of 2004 for declaration of ownership, for recovery of possession and mesne profit. However, on 19.9.2008, the said suit came to be dismissed for want of prosecution. Consequently, the petitioners have filed an application for restoration of the said suit alongwith the application for condonation of delay bearing Misc. R.J.E. No.12 of 2009. The

learned C.J.J.D. Mudkhed, by order dated 1.2.2011 rejected the said application seeking condonation of delay. Being aggrieved by the same, the petitioners filed Misc. Civil Appeal before the District Judge, Nanded alongwith Misc. R.J.E. No. 50 of 2011 for condonation of delay. However, the said Misc. R.J.E. No. 50 of 2011 also came to be dismissed by the learned District Judge-3, Nanded by passing the impugned order dated 25.10.2013. Hence, this writ petition.

4. Learned counsel for the petitioners submits that the petitioners plaintiffs are illiterate ladies, doing the agricultural work in rural area. They could not prosecute the suit as well as the Misc. application due to many reasons and prominent amongst them is that there was miscommunication in between them and their counsel.

5. Learned counsel for the respondents submits that the petitioners were not diligent in prosecuting the suit as well as Misc. R.J.E. No. 50 of 2011.

6. In view of above and considering that the petitioners are illiterate ladies, doing the agricultural work in rural area, as a last chance, to prosecute the Misc. R.J. No. 50 of 2011, I am inclined to allow this writ petition, subject to payment of costs. Hence, I proceed

to pass the following order:-

O R D E R

- I. Writ petition is hereby partly allowed.
- II. The impugned order dated 25.10.2013 passed by the District Judge-3, Nanded below Exh.1 in Misc. R.J. E. No. 50 of 2011 is hereby quashed and set aside.
- III. The Misc. R.J. E. No. 50 of 2011 is restored to its original number subject to the payment of costs of Rs.2000/- to be paid by the petitioners to the respondents within a period of four weeks from today and the learned District Judge, Nanded is directed to decide the said Misc. R.J.E. No. 50 of 2011 on its own merits.
- IV. Writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

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