

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 2938 of 2016

1. Vidya Naresh Khandelwal,
age 52 years occupation household
R/o 55/9, Shyiv Colony, behind Saraswati Vidya Mandir,
Jalgaon District Jalgaon.
2. Sau. Rekha Ravindra Jawale,
age 48 years occupation service
R/o C-5/5, Bafna Bagh, F-Wing,
post Alibagh District Raigarh
3. Sau. Megha Nitin Mahajan,
age 46 years occupation household
R/o C-5/5, Vijay Smruti Apartment,
Pendse Nagar, Dombivili (E) District Thane
4. Bapu S/o Atmaram Chaudhari,
age 44 years occupation service
R/o Sarika Apartment, B-2/8, Koparkhairane,
Vashi, New Mumbai

...Petitioners

VERSUS

1. Smt. Muktabai Ramchandra Korde, age 70 years,
2. Ramesh S/o Ramchandra Korde, age 45 yers
3. Kantilal S/o Ramchandra Korde, age 37 years
4. Suresh S/o Ramchandra Korde, age 34 years
5. Shobhabai Prabhakar Nakhande, age 41 years

All agriculturists by occupation and R/o Nadgaon
Taluka Bodwad District Jalgaon.

...Respondents

*Mr Brhmanand M. Dhanure, Advocate for petitioners
Mr A.O. Pawar, Advocate for respondents No. 1 to 4.*

CORAM : SUNIL P. DESHMUKH, J.

DATE : 26th June, 2018

ORAL JUDGMENT :

Rule. Rule made returnable forthwith and heard finally with consent of learned Advocates for the parties.

2. Petitioner No.1 alongwith her mother had instituted Regular Civil Suit bearing No. 221 of 1999 seeking specific performance of agreement of sale of landed property against present respondents and others. During pendency of suit, petitioners' mother passed away on 1st April, 2001. In the circumstances, scheduled date in the suit *i.e.* 19th April, 2001 went unattended and the suit came to be dismissed in default. While subsequently, Lawyer concerned engaged by petitioner had realized the same, he had applied for certified copies of the orders passed by the Court. The copies were received at the end of petitioner around 6th July, 2001. It appears that the date for delivery had been 4th July, 2001 and delivery had been taken on 6th July, 2001 by the lawyer. Thereafter, restoration proceedings ensued and notices were issued to respondents. Respondents have caused their appearance in response to the notice of application. *Albeit*, according to learned Counsel for present

respondents, matter had been getting adjourned by the petitioner on one or the other pretext, finally, restoration application came to be rejected for not properly explaining delay which had occurred of about one or two days. Appeal therefrom before the District Court had also resulted in dismissal.

3. Looking at aforesaid circumstances, *although* learned Counsel for respondents purports to resist for giving indulgence to the request made in the writ petition, one may have to give regard to that, mother of the petitioner had passed away and in the same month the suit was dismissed in default. Regard may also be had to that lawyer of petitioner had immediately applied for certified copies after dismissal of the suit in default. There has been delay at the most of two days.

4. The matter relates to specific performance with regard to immovable property. Having regard to the facts and circumstances of the case and taking overall view, it appears to be expedient to give indulgence to the request made in the writ petition subject to of course, putting the petitioner to pay some costs to compensate inconvenience caused to the otherside.

5. In view of aforesaid, writ petition allowed in terms of prayer clause 'B'. The restoration application filed by petitioners

stands allowed subject to payment of costs of Rs. 7500/- (Rs. seven thousand five hundred only) to the other side.

6. Rs. 7500/- be deposited in Trial Court within a period of six weeks from the date of receipt of writ of this order.

7. The Trial Court to proceed with the trial of the suit expeditiously and dispose of the same as early as possible.

8. Rule made absolute in aforesaid terms.

**(SUNIL P. DESHMUKH)
JUDGE.**

Madkar