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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2197 OF 2018

Smt.Bagirathi D. Phalke, since deceased through Her L.Rs. - Ram D. Phalke & Ors.	...Petitioners
V/s.	
Smt.Shalan D. Phalke & Ors.	...Respondents

Mr.P.B. Gujar for the Petitioners.

Mr.D.D. Rananaware for the Respondent Nos.6A-1 to 6A-3 and 6-B.

CORAM : R.D. DHANUKA, J.
DATE : 24TH OCTOBER, 2018.

P.C. :-

1. The papers are allowed to be produced at 3:00 p.m.
2. By this petition filed under under Article 227 of the Constitution of India, the petitioners (original appellants in Regular Miscellaneous Application No.70 of 2013) have impugned the order dated 2nd August, 2017 passed by the learned District Judge - 3, Satara, below Exhibits 33, 34 and 36 which was for condonation of delay, setting aside the order of abatement and for permission to bring the legal heirs of the opponent no.6 respectively on record.
3. It is not in dispute that no affidavit in reply was filed to the applications filed by the petitioners below Exhibits 33, 34 and 36. Learned counsel for the legal heirs of the opponent no.6 states that

no reasons were rendered in the applications filed by the petitioners for seeking condonation of delay, for seeing aside the order of abatement and for permission to bring the legal heirs of the opponent no.6 on record. The explanation for delay thus rendered in the applications filed by the petitioners remain uncontroverted.

4. In my view, the reasons recorded by the petitioners in those applications are not fully satisfactory however in the interest of justice and in view of the fact that the legal heirs of the original opponent no.6 had not controverted the averments made in those applications, I am inclined to accept the request of the leaned counsel for the petitioners to grant an opportunity to carry out amendment and to bring the legal heirs of the original opponent no.6 on record after granting condonation of delay however, on payment of reasonable costs.

5. Mr.Gujar, learned counsel appearing for the petitioners as well as the learned counsel for the respondent nos.6A-1 to 6A-3 and 6-B have left to the discretion of this Court to pass an order of reasonable costs.

6. I therefore, pass the following order :-

a). The impugned order dated 2nd August, 2017 passed by the learned District Judge – 3, Satara below Exhibits 33, 34 and 36 is quashed and set aside. The applications (Exhibits 33, 34 and 36)

filed by the petitioners in Regular Miscellaneous Application No.70 of 2013 are allowed on the condition that the petitioners pay costs of Rs.3,000/- to the Kirtikar Law Library within two weeks from today. The receipt showing payment of such costs as may be issued by Kirtikar Law Library which shall be produced by the petitioners before the learned District Judge.

b). Upon production of such receipt before the learned District Judge by the petitioners, the learned District Judge shall permit the petitioners to bring the legal heirs of the opponent no.6 on record. The said amendment shall be permitted to be carried out within one week from the date of production of such receipt.

c). The amended copy of the appeal memo shall be served on the legal heirs of the opponent no.6 and also on other respondents which are appearing in the said Regular Miscellaneous Application No.70 of 2013 simultaneously.

7. The writ petition is allowed in aforesaid terms.

8. All the parties as well as the learned District Judge to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)