

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6726 OF 2014
ALONGWITH
APPEAL FROM ORDER NO. 1014 OF 2014

J.M. Education Trust & Ors.

..... Petitioners

VERSUS

Janu Bendu Bhoir & Ors.

..... Respondents

Mr.Abhay Thorat for the Petitioners.

Mr.Nilesh R. Pandey for the Respondent nos. 1 and 6 to 12.

Mr.S.S.Shah, i/b. Mr.Priyank Shukla for the Respondent nos. 13 and 14.

CORAM : R.D. DHANUKA, J.

DATE : 11th SEPTEMBER, 2018

P.C.

By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 17th December, 2013 in the writ petition thereby rejecting the application filed by the petitioners for setting aside the other claims and for condonation of delay of 87 days in filing the said application insofar as respondent nos. 3, 4 and 5 are concerned. Insofar as the appeal from order is concerned, the same is filed against the order passed by the learned trial judge on 24th February, 2014 dismissing the application filed by the petitioners under Order 9 Rule 13 of the Code of Civil Procedure, 1908 for setting aside the order of dismissal of suit for default.

2. With the assistance of the learned counsel for the parties who are present in court, I have perused the reasons recorded by the two courts below while dismissing the application filed by the petitioners for setting aside an order of dismissal of suit and the application filed by the petitioners rejecting for setting aside the order of abatement and for condonation of delay.

3. Both the courts have rendered findings after considering the documents on record that the petitioners had made various false and incorrect statements in both the applications and has not justified the delay in filing application for setting aside the order of abatement and setting aside the order passed by the learned trial judge dismissing the suit.

4. The petitioners are fully aware that the respondent no.5 has expired as is apparent from the averments made in the plaint itself. There were several trustees of the petitioner trust and were fully aware of the dismissal of the suit and about abatement of the suit. Several adjournments were taken by the petitioners on one or the other ground before the learned trial judge and thus in these circumstances, the learned trial judge in my view was justified in dismissing the suit.

5. Learned counsel appearing for the contesting respondents states that the suit was for specific performance of the agreement. The entire property has been already developed. The society is already registered. For these reasons also I am not inclined to interfere in the orders passed by the two courts below.

6. Writ petition as well as the appeal from order are devoid of merit and are accordingly dismissed. No order as to costs.

[R.D. DHANUKA, J.]