

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

CIVIL REVISION APPLICATION NO. 881 OF 2014

Mohammad Shafi Usmansaheb Kokni & Ors. ...Applicants

Versus

Sou.Dulhanbi Malansaheb Kokni
Since deceased through LR's
Gafoor Saheb Malang Saheb Kokni & Ors. ...Respondents

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Mr.S.S.Patwardhan for the Applicants.

Mr.Sanjeev M. Gorwadkar, Senior Advocate for Respondent Nos.
1, 2 (1) to 2 (4) and 3.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: JUNE 11, 2018**

P.C. :

1. This Civil Revision Application is directed against the order dated 26th April, 2014 passed by the learned 9th Civil Judge, Junior Division, Nashik thereby allowing the application below 231 in Regular Civil Suit No. 1194 of 2012.

2. The plaintiffs/ respondents have filed an application under Section 5 of the Limitation Act for condonation of delay caused for

bringing legal heirs of deceased defendant no.4 –Fatemabi Usmanbi Kokni on record.

3. The learned Counsel for the applicants submits that the original plaintiff has filed a suit for administration of the suit property under Muslim Law. He further submits that the original plaintiff and defendant no. 4 are the relatives. In fact, the properties were partitioned in the year 1941 and the original plaintiff filed the suit for the properties, which were already partitioned. He further submits that though defendant no.4- Fatemabi Kokni was cousin of the original plaintiff, the original plaintiff did not take step to bring on record the legal heirs of the deceased defendant no.4 -Fatemabi Kokni. Defendant no.4- Fatemabi Kokni died on 28th January, 2006. On 25th August 2009, the plaintiffs filed a pursis communicating the death of defendant no.4- Fatemabi Kokni. However, the plaintiffs did not file any application for bringing on the record the legal heirs of defendant no.4 till 20th November, 2013. Hence, there is a delay of 7 years without any sufficient cause and the learned Judge of the trial Court has illegally allowed the application.

4. The learned Counsel for the respondents opposes this Civil Revision Application.

5. Heard submissions. Perused the impugned order. Whether the suit is maintainable or not, as the properties were already partitioned, will be decided by the trial Court at the time of hearing of the suit on merits. In fact, there is a delay of 4 years, as the pursis communicating the death of defendant no.4- Fatemabi Kokni was filed in the month of August, 2009 and the application for bringing on record the legal heirs of defendant no.4 was filed in the month of November, 2013. It is mentioned in the application that in spite of blood relationship between the original plaintiff and defendant no.4, there is no communication between them and, therefore, the original plaintiff was not aware about the legal heirs of defendant no.4 and hence, there is delay. The suit is filed for administration of the suit property under the Muslim Law and, therefore, the presence of all the co-sharers is required to decide the issue. Hence, the order passed by the learned Judge of the trial Court is not illegal. No interference is required in the order, except the order of costs is modified as follows :

The order dated 26th April, 2014 passed by the learned 9th Civil Judge, Junior Division, Nashik is maintained on condition that the plaintiffs are directed to pay the costs of Rs. 10,000/- to the legal heirs of defendant no.4- Fatemabi Kokni in the trial Court.

6. With this, Civil Revision Application is disposed of.

(MRIDULA BHATKAR, J.)