

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

**WRIT PETITION NO. 1939 OF 2016
WITH
CIVIL APPLICATION NO. 2605 OF 2016**

Kisan Chandar Bhoi

(Since deceased) Through LRs. & Ors. ... Petitioners
V/s.

Ratanbai Tukram Shinde

(Since deceased) Through LRs. & Ors. ... Respondents

- Mr.Vivek V. Salunke for the Petitioners.
- Mr.Hitesh P. Vyas a/w. Mr.Chandrashekhar Yadav for Respondent Nos.1(b), 2(h) & 3.
- Mr.K.D. Bhosale for Respondent Nos.1(a), 1(c), 1(d) & 1(e).

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 31st JANUARY, 2018.

P.C. :

1] Heard learned counsels for both the parties.

2] By this Writ Petition filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 14.12.2015 passed by the Civil Judge Junior Division, Indapur, below Exhibit-110, in Regular Civil Suit No. 18 of 2004.

3] The Application at Exhibit-110 was filed before the executing Court by the Respondents/Decree Holders to bring on

record, the legal heirs of the deceased Defendants i.e. Defendant No.4 who has expired on 14.8.2006, then that of Defendant No.10 who has expired on 11.7.1999, Defendant No.14 who has died on 18.12.2010, Defendant No.20, who has died on 21.11.1987 and Defendant No.21 who has expired on 12.3.2015.

4] As regards Defendant Nos.10 and 20, the suit was already abated against them and hence, the objection was raised to bring the names of their legal heirs on record.

5] The trial Court has, however, vide its impugned order allowed the entire application, without even considering, whether the suit has been abated against Defendant Nos.10 and 20. The order of the trial Court is conspicuously silent about the grounds of objection raised by the Petitioners herein. Moreover, it appears that the application at Exhibit-110 was also not filed properly, as it was not accompanied with the application for condonation of delay or the application for setting aside the abatement.

6] In view thereof, the matter needs to be remanded to the trial Court by setting aside the impugned order which does not deal with the real controversy between the parties.

7] Accordingly, the Writ Petition is allowed. The impugned order passed by the trial Court is quashed and set-aside. Liberty is granted to the Decree Holder to file afresh application for condonation of delay for setting aside the abatement and in order to bring on record the legal heirs of Defendant Nos.4, 10, 14, 20 and 21. If such application is filed, the executing Court shall decide the same, as expeditiously as possible, and preferably within two months, from the receipt of this order.

8] All points and contentions, including the maintainability of the application for setting aside the abatement, are expressly kept open.

9] In view of disposal of Writ Petition, nothing survives in the Civil Application and hence, it stands disposed of.

[DR.SHALINI PHANSALKAR-JOSHI, J.]