

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

WRIT PETITION NO.9278 OF 2014

Abdul Majid s/o. A. Raheman,
Age : 52 years, Occ. Labour,
r/o. Basmat, Dist. Hingoli,
and anr.

..Petitioners

Vs.

Nizamoddin s/o. Md. Shakur
(died) and others.

..Respondents

Mr. H.I.Pathan, Advocate for petitioners
Mr. B.A.Shinde, Advocate for respondent nos.2 to 4
and 6

**CORAM : R.G. AVACHAT, J.
DATE : SEPTEMBER 09, 2019**

ORDER :-

Heard.

2. The challenge in this Writ Petition is to the order dated 04.04.2014 passed by learned Civil Judge, Senior Division, Basmatnagar, in Civil Misc. Application No.57 of 2011. By the impugned judgment and order, the application preferred by the

petitioners/plaintiffs for condonation of delay in moving an application for restoration of the suit which was dismissed in default, came to be rejected.

3. Heard learned Counsel for the petitioners and learned Counsel for respondent nos.2 to 4 and 6. Perused the impugned order.

4. Learned Counsel for respondent nos.2 to 4 and 6 would support the impugned order, contending that the petitioners/plaintiffs were grossly negligent. The delay is of 870 days. The petitioners/plaintiffs had knowledge of dismissal of the suit in default.

5. The petitioners filed the suit, being Regular Civil Suit No.61 of 1981, for partition and separate possession of their ancestral property. It is the case of the petitioners that Advocate — R.N.Potdar, who was engaged to conduct the trial in the suit, passed away in May, 2005. Original plaintiff no.1 was looking after the suit. He too

died, pending the suit. The petitioners remained in dark about the status of the suit. None of the associates of the deceased Advocate had informed the petitioners about death of Advocate Potdar. No sooner the petitioners realised the suit to have been dismissed in default, the application (C.M.A. No.57 of 2011) was moved for condonation of delay in moving the application for restoration of the suit.

6. True, there was delay of 870 days. The facts stated by the petitioners on affidavit, lead me to the conclusion that the delay was satisfactorily explained. Had the trial Court taken justice oriented approach, the application could not have been dismissed. It was a suit for partition and separate possession of the family properties. On technical grounds, the rights of the parties cannot be defeated. The suit has to be decided on its own merits after giving the parties full opportunity of hearing.

7. In view of the above, I am inclined to allow the Writ Petition by setting aside the impugned order.

8. In the result, the Writ Petition succeeds. The same is allowed, subject to payment of costs of Rs.2,000/- (Rupees Two Thousand) by the petitioners. The impugned order dated 04.04.2014 passed by learned Civil Judge, Senior Division, Basmatnagar, in Civil Misc. Application No.57 of 2011, is set aside. The delay stands condoned. The Trial Court shall decide the application moved for restoration of the suit dismissed in default, within a period of three months from the date of receipt copy of this order.

[R.G. AVACHAT, J.]