

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL APPLICATION NO. 1609 OF 2015****IN****WRIT PETITION NO. 3434 OF 1990**

Vasant Dattaraya Panadi

(Since decd.) Through LRs. & Ors.

.....Applicants.

Vs.

Hiralal Dhanraji Chavan

(Since decd.) Through LRs.

Smt. Shevantabai Hiralal Chavan & Ors.

.....Respondents.

Mr. S.G. Deshmukh i/by Mr. Sachin Deokar for the Applicants and for the Petitioners in WP No. 3434 of 1990.

Mr. V.S. Tadake for the Respondent Nos. 2, 4 to 7, 9 & 10 for the Respondent-State.

CORAM : A. S. GADKARI, J.**DATE : 18th OCTOBER, 2019.****P.C.:-**

This is an Application for restoration of Writ Petition No. 3434 of 2019 which was dismissed for not taking steps for bringing legal heirs and representatives of deceased Respondent No.2 on record within the stipulated period as per Order dated 25th October, 2010. There is a delay of 4 years and 8 months in filing the present Application.

2 Mr. Deshmukh, the learned counsel for the Applicants

submitted that, earlier Advocate on record Mr. Kankaria has stopped practice and the said fact was not within the knowledge of the Applicants. That, the Applicants were under the bonafide impression that, the present Petition is pending for final adjudication and therefore, it caused delay in filing the present Application. He submitted that, the delay which is caused in filing the present Application is neither intentional nor deliberate and has occurred for the reasons stated in the Application. Mr. Deshmukh, submitted that, the Original Respondent Nos.1 and 3 are the Legal heirs of Respondent No.2 and even otherwise the presence of Respondent No.2 in the petition is not necessary.

He further submitted that, the Petitioner has also filed Civil Application No. 1610 of 2015 for deleting the Respondent No.2 from the array of Respondents and the same is also listed on board today.

3 The learned counsel for the Respondent Nos. 2, 4 to 7, 9 & 10 opposed the Application. He submitted that the Petitioner has neither offered sufficient and appropriate explanation for condonation of delay nor in bringing legal heirs of Respondent No.2 on record within the stipulated period as per the provisions of law. Therefore,

the present Application may not be entertained.

4 In view of the submissions made by the learned counsel for the Applicants and in the interest of justice, I am inclined to condone the delay and restore the Petition, subject to condition that, the Applicants/Petitioners shall pay a cost of Rs.10,000/- to the High Court Legal Services Committee, Mumbai, having its account in the name of "*High Court Legal Aid Fund*" within a period of four weeks from today.

5 In view thereof, delay is condoned, abatement if any, is set aside and application is allowed in terms of prayer clauses (a) and (b).

It is made clear that, the payment of costs is a condition precedent for restoration of the Writ Petition.

(A.S. GADKARI, J.)