

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12264 OF 2018
AND
WRIT PETITION (ST) NO. 25643 OF 2018

Parisa Annappa Chougule

Deceased by heirs,

1a) Vimal Shridhar Chougule and Ors. Petitioners

vs.

Raosaheb Appaso Chougule and Ors. Respondents

Mr. V. B. Rajure for the petitioners.

Mr. S. S. Koregave for respondent No.6e in W.P. No. 12264 of 2018

Mr. P. D. Dalvi for respondent No.6a to 6d, 6f, 6h(1) to 6h(3) in
W.P. No. 25643 of 2018.

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CORAM : M. S. SONAK, J.

DATE : 03 APRIL 2019.

ORAL JUDGEMENT :-

Heard Mr. V. B. Rajure for the petitioners,
Mr. P. D. Dalvi for respondents No. 6a to 6d, 6f, 6h(1)
to 6H(3) in writ petition No. 25643/2018 and Mr. S.
S. Koregave for respondent No. 6e in writ petition No.
12264/2018.

2] Mr. Dalvi and Mr. Koregave represent the
contesting respondents, since the impugned orders
have been made on the application taken out by the
respondents whom they represent. Accordingly, Rule
in both the petitions. With the consent of and at the

request of this learned counsel for the parties, Rule in both petitions, is made returnable forthwith.

3] The challenge in Writ Petition No. 1226 of 2018 is to the impugned order dated 23/04/2018 made by the Appeal Court which read thus:

“Peruse the Application and Say filed by the Respondents. Heard Learned Advocates for both parties. Delay to file Written Statement by present Applicant is condoned vide order below Exh. 64. Present Applicants wants to adopt W.S. filed by Defendant No.1, which is already there on record. No prejudice will cause to the Respondents. In the interest of justice and to avoid multiplicity of the proceeding Application is allowed.”

4] The challenge in Writ Petition No. 25643 of 2018 is again to the order dated 23/04/2018 made by the Appeal Court which read thus:

“Peruse the Application and say filed by Respondent. Heard both Advocates. Considering nature of suit and fact that, present applicant were not party to the suit previously. Delay being only technical without any negligence is hereby allowed.”

5] From the impugned orders, it is clear that the Appeal Court by cryptic order, has purported to condone delay on the part of respondents in filing the written statement in the suit. According to me, such a course of action ought not to have been adopted by the Appeal Court, in such a casual manner. There is no explanation for not filing the written statement before the Trial Court. There is also no explanation for the inordinate delay. In such circumstances, the Appeal Court was not justified in making the impugned orders.

6] Mr. Koregave submits that, this is a case where the respondents merely sought to adopt the contents of the written statement filed by the other defendants. He points out this is a suit for partition and therefore there was nothing wrong in the request made.

7] According to me, grant of permission to adopt written statement is the same as grant of permission to file a written statement. Therefore, what could have been done directly, cannot be done indirectly as well.

8] For the aforesaid reasons both the impugned orders are set aside.

9] Rule, in both the petitions is made absolute in the aforesaid terms. There shall be no order as to costs.

10] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)