

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL APPLICATION NO. 418 OF 2019****IN****WRIT PETITION NO. 453 OF 2016**

Ganpat Vitthal Madye

.....Applicant.

Vs.

Baburao Rajaram Samant & Ors.

.....Respondents.

Mr. Milind Parab i/by Milind Parab & Associate for the Applicant.

Smt. Suvarna Joshi, for the Respondent No.4.

CORAM : A. S. GADKARI, J.**DATE : 26th SEPTEMBER, 2019.****P.C.:-**

This is an Application for setting aside the Order dated 9th January, 2018 passed by the Registrar (Judicial-I).

2 By the said Order, the Petitioner was directed to take steps against unserved Respondent Nos.3, 8-B and 8-E and deceased Respondent No.7, failing which the Writ Petition would stand abated against the Respondent No.7 without reference to the Court.

As the Petitioner did not take effective steps in serving the said unserved Respondents, so also bringing legal heirs of Respondent No.7 on record, the Petition as against the said Respondents, is dismissed by the said self operative Order.

There is a delay of 362 days in filing the present Application.

3 Perusal of Application would indicate that, the delay is not satisfactorily explained by the Applicant. It appears from the record that, the Applicant has utterly failed to take any steps in effecting service upon Respondent Nos.3, 8-B and 8-E so also, to bring legal heirs of Respondent No.7 on record.

It further appears from the record that, neither notices were issued to the said Respondents, nor an Application for bringing legal heirs of Respondent No.7 was filed within the period of limitation as per the Order dated 9th January, 2018.

4 The learned counsel for the Applicant submitted that, the Applicant is a tenant and is striving to get the land in his favour from the Respondents-Landlords. As noted earlier, there is no satisfactory explanation offered by the Applicant for condonation of delay, coupled with the fact that, the Applicant was not diligent enough in taking effective steps in furtherance of Order dated 9th January, 2018.

5 However, in the interest of justice, I am inclined to condone the delay subject to condition that, the Applicant shall pay costs of Rs.20,000/- to the High Court Legal Services Committee,

Mumbai, having its account in the name of “*High Court Legal Aid Fund*” within a period of three weeks from today.

It is made clear that, the payment of aforestated costs by the Applicant within the said stipulated period, shall be a condition precedent to condone the delay and setting aside the Order dated 9th January, 2018.

6 In view of the above, Application is allowed in terms of prayer clauses (a) and (b).

The Applicant is directed to take necessary and effective steps against the unserved Respondent Nos.3, 8-B and 8-E and for bringing legal heirs of deceased Respondent No.7 within a period of six weeks from the date of payment of costs to the said Committee, failing which the Petition *qua* the said Respondents shall stand dismissed without further reference to this Court.

(A.S. GADKARI, J.)