

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

WRIT PETITION NO.3861 OF 2018

Vidya Kisan Talreja ... Petitioner
Vs.
Hardevi Thavardas Karia Kara & Ors. ... Respondents
.....
Khalid Kazi I/b. C.K. Legal for the Petitioner.
None for the Respondents.
.....

CORAM : M. S. KARNIK, J.

DATE : 16th SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioner. None for the respondents though they are duly served.

2. By this petition filed under Article 227 of the Constitution of India, the petitioner the legal heir of the original plaintiff challenge the order dated 5.1.2018 passed by the Civil Judge Junior Division, Ulhasnagar in rejecting the application for condonation of delay of 80 days in filing the application for restoration. The suit filed by the plaintiff came to be dismissed for default on 22.7.2011. Learned counsel for the petitioner pointed out that the petitioner got knowledge of the same on

27.10.2011. The application for certified copy of the said order was made on 28.10.2011 and it was given to her on 24.1.2012.

3. It is the contention of the learned counsel for the petitioner that the concerned advocate was not keeping well and therefore unable to attend the Court due to his ill-health. It is in these circumstances the suit came to be dismissed for default.

4. Learned counsel for the petitioner would submit that the Trial Court was not justified in refusing to condone the delay of 80 days in filing the application for restoration. The petitioner claims to be the legal heir of the plaintiff. However she did not file any application for bringing herself on record as legal heir. Therefore with a view to give an opportunity to the petitioner to file an appropriate application for bringing herself as the legal heir of the plaintiff on record, the impugned order is set aside. The petitioner to file an appropriate application for bringing herself on record as legal heir. The Trial Court to rehear the Civil Miscellaneous Application No.76 of 2012 along with the application made by the petitioner for bringing her on record as

legal heir of plaintiff. Learned counsel for the petitioner states that the application will be made within a period of three weeks from today. The Trial Court to decide the Civil Miscellaneous Application afresh without being influenced by the observations made in the impugned order.

(M. S. KARNIK, J.)