

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

**WRIT PETITION NO.3675 OF 2019**

Anant @ Pandharinath Abajaji

Gaikwad

... Petitioner

Vs

Dnyanoba Bhausahab Badal & Ors.

... Respondents

...

Mr. Drupad Patil for the Petitioner.

Mr. Yogesh Patil for the Respondents.

**CORAM : SANDEEP K. SHINDE J.**

**DATE : JULY 8, 2019**

**P.C. :**

Petitioner's suit was dismissed on 30<sup>th</sup> August, 1988 against which First Appeal No.190 of 1990 was filed before this Court. On 25<sup>th</sup> January, 2012, appeal was transferred to the District Court in view of the Amendment by the Maharashtra Act III of 1999 in Section 26 of the Bombay City Civil Courts Act, 1869 in respect of the pecuniary jurisdiction. In the meantime, respondent no.1 died on 9<sup>th</sup> December, 2011 and respondent no.3 died on 20<sup>th</sup> November, 1999. It further appears that on 25<sup>th</sup> September, 2012 vide pursis intimation reporting death of respondent nos.1 and 3 was given. On

26<sup>th</sup> July, 2013, an application was filed by the appellant for bringing the legal heirs of the deceased respondents on record alongwith an application for setting aside abatement. The learned appellate Court declined to condone the delay having found that no steps were taken by the appellant and for keeping the appeal pending for more than five years. Another ground on which this application has not been considered is that even after intimation, appellant did not take steps for nine months.

2            This Court on 22<sup>nd</sup> March, 2019 directed the office to issue notice to the respondents and further directed the petitioner to deposit an amount of Rs.11,000/- towards the security for tentative costs.

3            The learned counsel for petitioner has taken me through the impugned order and submits that he has deposited cost as directed by this Court. He submits that in the interest of justice, the impugned order may kindly be set aside. Application is vehemently opposed by the learned counsel for the respondent.

4           Taking into consideration facts of the case that since substantive First Appeal is being filed by unsuccessful plaintiffs, in the interest of justice, the order impugned is required to be set aside by imposing cost quantified at Rs.25,000/-. That since Rs.11,000/- are already deposited in the Court, the petitioner shall deposit balance amount in this Court within two weeks from today. Office shall permit respondents to withdraw the cost Rs.25,000/-.

5           With the aforesaid directions and for the reasons stated above, Writ Petition is allowed in the aforesaid terms and disposed of accordingly.

**(SANDEEP K. SHINDE, J.)**