

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

WRIT PETITION NO.13261 OF 2017

Mrs. Laxmibai Narayan Devkar & Ors. ...Petitioners

Versus

Prakash Sakharam Ruikar (Decd.)

Through his Legal Heirs,

1. Mr. Atul Prakash Ruikar & Ors. ...Respondents

Mr. Jaydeep Deo for Petitioners.

Mr. Sachin S. Punde for Respondent Nos.1 to 6.

CORAM : SANDEEP K. SHINDE J.

DATE : AUGUST 08, 2019

P.C. :

1. Prakash Sakharam Ruikar had instituted Regular Civil Suit No.670/1999 in the Court of Civil Judge Junior Division, Pune, seeking decree of partition. Pending Suit, Prakash Sakharam Ruikar passed away on 8th January 2008. On 25th April 2008, the Trial Court ordered that the Suit stands disposed of, as abated.
2. On 8th February 2011, Atul (son of plaintiff) requested the trial Court for setting aside the order of abatement and condone the delay occurred for the same.

3. The learned Trial Court condoned the delay on 24th January 2017 against which the defendants in the subject suit have preferred this Writ Petition under Article 227 of the Constitution of India.
4. Mr. Jaydeep Deo, learned Counsel for the petitioners makes the following submissions :
 - i) Plaintiff died on 8th January 2008 and in November 2008 legal representatives of deceased plaintiff, executed a Power of Attorney in favour of Atul (son of plaintiff) and empowered him to prosecute the pending suit, which relates to property described in paragraph 1(c) of the Power of Attorney.
 - ii) that Advocate who has identified the signatures of Atul and others is the Advocate who was representing the deceased, plaintiff.
 - iii) that the deceased plaintiff and his son were living in the same house; and therefore it is not conceivable to hold that Atul, was not aware of the suit instituted by his father.
5. Besides Mr. Deo, learned Counsel for petitioner has taken

me through the cross-examination of Atul and would submit the delay has not been justified at all and the Trial Court has not considered the material on record before condoning the delay. In other words, according to Mr. Deo no sufficient cause has been shown for condoning the delay.

6. On the other hand, Mr. Punde learned Counsel for the respondents has placed on record, compilation of documents showing more than one plaint/suits instituted by Prakash Ruikar. Mr. Punde submits that therefore inadvertently it got out of his attention that subject suit was instituted by the deceased plaintiff.
7. Taking into consideration the facts of the case and the evidence on record, in my view, it cannot be said that 'no sufficient cause' has been shown for condoning the delay and therefore I am not inclined to interfere with impugned order dated 24th January 2017 passed below Exh.1 in Misc. Application No.199/2011 in Regular Civil Suit No.670/1999.
8. However, peculiar facts of the case, warrants imposition

of cost Rs. 30,000/- on the respondent Nos.1 to 6. The respondents shall deposit quantified cost in Trial Court within four weeks from today and petitioners are granted liberty to withdraw the costs unconditionally after filing appropriate application before the Trial Court.

9. Petition is dismissed and disposed of accordingly.

(SANDEEP K. SHINDE, J.)