

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

WRIT PETITION NO.8579 OF 2018

Devadatta Chandrakant Patil & Anr.	... Petitioners
Vs.	
Rajan Laxman Thalkar and Ors.	... Respondents
.....	
Mr. J.C. Patil for the Petitioners.	
None for the Respondents.	
.....	

CORAM : M. S. KARNIK, J.

DATE : 26th AUGUST, 2019.

P. C.:

1. Heard learned counsel for the petitioners.

2. The order impugned in this Petition is passed below Exhibit 103. The Trial Court by an order dated 20.4.2018 set aside the order dated 29.4.2016. The defendant No.1 had failed to cross examine the plaintiff even on 29.4.2016 and therefore the Trial Court was constrained to pass 'no cross' order.

3. The petitioners are the original plaintiffs had filed the suit for specific performance against the defendants. In challenge to the impugned order, learned counsel for the

petitioners would submit that there was a gross delay of 591 days in filing the application for setting aside 'no cross' order. He would further submit that the Trial Court has passed the order without jurisdiction. In his submission the defendant No.1 was always aware of 'no cross' order that was passed and therefore the reasons given for condoning the delay are not satisfactory. Learned counsel would further submit that the defendant No.1 was always under the impression that the suit has abated and therefore he did not file any application for setting aside 'no cross' order. He would further submit that the defendant No.1 has been negligent in taking steps within a reasonable time to set aside the order. He would further submit that the reasons for setting aside 'no cross' order are not bonafide.

4. I have gone through the order passed by the Trial Court. The Trial Court has observed that defendant No.1 died on 27.4.2013. It has further observed that as a result of the death, the legal heirs of defendant No.1 could not cross examine the plaintiffs as the legal heirs were not on record.

5. The application for bringing the legal heirs of defendant No.1 was filed on 27.6.2016. The Trial Court was of the opinion that as there is delay in filing the application, the cost of Rs.3,000/- should be imposed on the legal heirs of defendant No.1.

6. In my opinion, the view taken by the Trial Court can not be said to be infirm so as to warrant any interference.

7. However, considering the suit is of the year 2009, the Trial Court is requested to expedite the suit and decide the suit preferably within a period of one year from today.

8. The Writ Petition is rejected.

(M. S. KARNIK, J.)