

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2537 OF 2015**

Parsuram Krishna Kamble & Ors.	...Petitioners
Versus	
Shivaji Baburao Kadam & Ors.	...Respondents

Ms. Rati S. Sinhasane i/b Mr. U. R. Mankapure for the Petitioners

Mr. Omkar Nagavekar i/b Ms. Prabha U. Badadare for the Respondent Nos.
1, 2, 3(a) to 3(d)

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 12th DECEMBER 2019

P.C. :

1 Heard learned counsel for the parties.

2 By this petition, the petitioners have impugned the order dated 4th August 2014 passed by the learned Civil Judge, Junior Division, Palus below Exhibit 1 in Civil Misc. Application No. 5/2011 in Regular Civil Suit No. 247/1980. Learned counsel for the petitioners submits that the learned Judge has erred in law in not condoning delay of 127 days caused in filing Civil Misc. Application No. 5/2011 for restoration of Regular Civil Suit No. 247/1980, which was dismissed for non-prosecution. She submits that the petitioner Nos. 1 and 2 are staying in Mumbai; that petitioner No. 3 is illiterate and petitioner No. 4 was bed-ridden and as such, it was not

possible for the petitioners to follow up the case with their Advocates in Islampur. She submits that sufficient cause has been shown in the application for condoning the delay, which has been ignored or not considered by the learned Judge.

3 Learned counsel for the defendants/respondents opposes the application. He submits that no interference is warranted in the impugned order.

4 Perused the papers. The petitioners are the original plaintiffs who had filed Regular Civil Suit No. 247/1980 in the Court of the learned Civil Judge, Junior Division, Islampur with respect to Gat No. 1139 situated at Nagthane. Subsequently, the said suit was transferred to the Civil Judge, Junior Division at Palus and renumbered as Regular Civil Suit No. 12/2008. It appears that the petitioners' suit was dismissed by the learned Judge on 1st October 2010, as neither the Advocate nor the petitioners remained present. Pursuant thereto, the petitioners filed a Civil Misc. Application No. 5/2011 for restoration of the said Civil Suit which was dismissed for non-prosecution along with an application (Exhibit 1) for condonation of delay in filing the said application. The said application was rejected by the learned Judge on 4th August 2014.

5 A perusal of the delay condonation application shows that the petitioners had set out in the said application the reasons for not being present before the learned Civil Judge, Junior Division, pursuant to which, the suit was dismissed for non-prosecution. The learned Judge ought to have seen that sufficient cause was shown by the petitioners for condoning the delay.

6 Accordingly, the impugned order dated 4th August 2014 passed by the learned Civil Judge, Junior Division, Palus below Exhibit 1 in Civil Misc. Application No. 5/2011 in Regular Civil Suit No. 247/1980, is quashed and set-aside and delay of 119 days in filing Civil Misc. Application No. 5/2011 is condoned and Civil Misc. Application No. 5/2011 is restored back to its original file.

7 Since the Suit is of the year 1980, the learned Civil Judge, Junior Division, Palus to decide the Civil Misc. Application No. 5/2011 as expeditiously as possible and in any event, within three months from the date of receipt of this order.

8 Petition is disposed of accordingly.

REVATI MOHITE DERE, J.