

FARAD CONTINUATION SHEET No.  
IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH AT NAGPUR

**WRIT PETITION NO. 4965/2018**

(GAURAV SHRINIWAS NAWALE & OTHERS **VERSUS** MAHADEORAO PUNDLIKRAO PACHPOR & OTHERS)

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 Office Notes, Office Memoranda of Coram,  
 appearances, Court's orders of directions  
 and Registrar's orders  
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Court's or Judge's orders

Shri S.S. Shingane, counsel for petitioners.

**CORAM : A.S. CHANDURKAR, J.**

**DATE : JUNE 26, 2019.**

The respondents have been served with notice for final disposal but they have not chosen to contest the writ petition. Hence, the learned counsel for the petitioners has been heard.

Challenge is to the order dated 08.11.2011 passed in Miscellaneous Civil Application No.61 of 2007 thereby refusing to extend the time to pay costs that were directed to be paid for condoning delay in seeking restoration of the appeal.

An appeal filed under Section 96 of the Code of Civil Procedure, 1908 (for short, 'the Code') by one Tulsabai Nawale came to be dismissed in default. She sought restoration of the proceedings and the Appellate Court by order dated 18.07.2006 was pleased to restore the proceedings subject to paying costs of Rs.100/- to each of the non-applicants. The costs were to be paid within a period of fifteen days. It appears that the costs were not paid and in the meanwhile said Tulsabai expired on 23.06.2007. Her legal heirs filed an application for restoration of the proceedings by extending the time to pay the costs. This application has been rejected by the Appellate Court on the ground that the delay was not sufficiently explained.

It is submitted by Shri S.S. Shingane, learned counsel for the petitioners submitted that the legal heirs of said Tulsabai had no knowledge about the pendency of the proceedings. After the order dated 18.07.2006 was passed by the Appellate Court, Tulsabai who was aged more than seventy years was ailing and she expired on 23.06.2007. Thereafter, the son of said Tulsabai, Shriniwas, also expired on 04.10.2017. Only when the decree for partition and separate possession was sought to be executed that the petitioners got knowledge about the proceedings. On making enquiries, the details with regard to the present proceedings were informed to the petitioners. It is therefore submitted that in these facts, the proceedings be restored by permitting the petitioners to pay the costs by extending the time.

The respondents have not chosen to contest the prayers made in the writ petition.

I have perused the various orders passed that are placed on record. It can be seen that on 18.07.2006, the Appellate Court had restored the appeal subject to paying costs of Rs.100/- to each of the non-applicants. At that point of time, said Tulsabai was shown to be aged about seventy years. On account of illness, she expired on 23.06.2007. Other petitioners who are her legal heirs were not aware about the pendency of the proceedings and only when the decree for partition and separate possession was sought to be executed did they get knowledge about the said proceedings. Though the petitioners could have been diligent in prosecuting the proceedings, the facts indicate that for want of sufficient knowledge, they were not aware of the orders passed earlier during the lifetime of Tulsabai. Since the suit as filed is for partition and separate possession, an adjudication on merits is desirable. At the same time, the

respondents deserve to be compensated in the matter. Accordingly, following order is passed.

- I. Subject to the petitioners paying costs of Rupees Five Thousand each to the respondent nos.1 and 2 within a period of four weeks from today before the Appellate Court, the order dated 08.11.2011 passed in Miscellaneous Civil Application No.61 of 2007 is set aside.
- II. If the costs as stated aforesaid are deposited, the proceedings in Regular Civil Appeal No.106 of 2000 shall stand restored. If the proceedings are restored as a result of paying of the costs, the same shall be decided expeditiously on its own merits.
- III. The order dated 08.08.2018 shall continue for a period of eight weeks after which the Appellate Court would be free to deal with the proceedings in accordance with law.

The Writ Petition is allowed in aforesaid terms. No costs.

**JUDGE**