

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3014 OF 2017

(SMT. SHANTABAI WD/O. SITARAMJI LOKHANDE THR. LRS. 7 OTH...VS.. SAU. SNEHLATA
 RAMESH BAKHADE & OTH.)

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

Court's or Judge's orders

 Shri N.S.Warulkar, Advocate for Petitioners.
 Shri S.A.Mohta, Advocate for Respondent Nos. 1 to 7.
 Shri Raju Kadu, Adv. h/f. Shri S.D.Chande, Adv. for Resp.No.8.

CORAM : Z.A.HAQ, J.

DATED : JUNE 10, 2019.

The judgment passed by the trial Court in the suit for decree for partition and separate possession of the property was challenged by the respondents in appeal before District Court. During pendency of this appeal, Shantabai (original plaintiff/ decree holder) died. As the appellants before the District Court failed to bring on record legal representatives of deceased Shantabai, the learned District Judge passed an order on 17th April 2007 and disposed the appeal as abated. The original defendant Durgabai died on 29th August 2012.

In the execution proceedings possession of the agricultural land was given to legal representatives of Shantabai by the Circle Officer on 9th July 2013.

On 28th March 2013 the respondent Nos. 1 to 7 had filed an application praying for setting aside abatement, and for condonation of delay in filing application for setting aside order of abatement and for bringing legal representatives of original plaintiff-Shantabai on record. By the impugned order, the learned District Judge has condoned the delay, has set aside the order dated 17th April 2007 and has restored the appeal. This order is challenged by the petitioners in this petition.

. The submission on behalf of the petitioners is that the explanation given by the respondent Nos. 1 to 7 to show that there was sufficient cause, which prevented them from filing the application earlier, was not proper and sufficient to condone the inordinate delay of more than six years.

The facts on record show that the respondent No.1 to 7 claim that their mother Durgabai was suffering from cardiac problem since 2006 and on several occasions she was hospitalized at Nagpur. In the impugned order, it is recorded that the documentary evidence in support of the contention that Durgabai was not keeping good health at the relevant time are placed on record. The learned District Judge accepted the contention of the respondent relying on the documentary evidence produced by them on record. Admittedly, the decree against which appeal came to be filed is executed and decree holder has got possession of her share. In view of these facts, it cannot be said that the petitioners (decree holders) will be put to any prejudice if the respondents are granted opportunity to pursue the matter on merits.

After examining the matter, I find that the learned District Judge has taken pragmatic view. Hence, I am not inclined to exercise extraordinary jurisdiction to interfere with the impugned order.

The writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE