

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

925 WRIT PETITION NO.13544 OF 2017

SHAMSHERKHAN GULSHERKHAN PATHAN DIED LRS
JAMSHEDKHAN DIED LRS AKHTARBEE JAMSHED KHAN
PATHAN AND OTHERS
VERSUS
TUKARAM PUNJA JAMDAR DIED LRS ANNASAHEB TUKARAM
JAMDAR AND OTHERS

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Advocate for Petitioner : Mr. H.D. Deshmukh
Advocate for Respondent No. 1A : Mr. S.R. Sapkal h/f Mr. V.D.
Sapkal
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CORAM : V. K. JADHAV, J.
DATED : 8th JANUARY, 2020

PER COURT:-

1. Heard both sides.
2. It appears that respondents filed an application bearing enquiry application No. 14 of 2006 for condonation of delay caused in preferring an appeal. By way of application Exh.39, the respondents herein have sought amendment in the said enquiry application No. 14 of 2006 to the extent of insertion of the prayer clause for setting aside the abatement order. By order dated 16.7.2014, the learned District Judge, Shrirampur has allowed the said application. The petitioners herein have filed an application Exh.112 for review of the said order and learned District Judge, Shrirampur District Ahmednagar by impugned order dated 28.9.2017 rejected the application Exh.112 seeking review. In para 8 of the said order, the

learned District Judge has made the following observations:-

“8. Similarly having gone through application Exh.46, it appears that by this application at Exh.46, it has been prayed to bring legal heirs of deceased defendant No.1 on record in the delay condonation application and not in the main suit or appeal. If the delay application has been allowed, then only, appeal will be registered and proceed further. So also, if the reasons are found just and proper, then only prayer of setting aside abatement against defendant No.1 will be allowed. For that, technically, legal heirs of defendants are required to be made parties in the delay application and for that the application Exh.46 appears to be made. Admittedly, there is no delay application alongwith said application for taking such legal heirs on record and the said application has been allowed on 16.6.2014.”

3. It is thus clear that the learned District Judge has observed that if the reasons are found just and proper then the prayer of setting aside the abatement order of defendant No.1 will be allowed.

4. In view of this, there is no need to consider this writ petition and the petitioners can very well raise the objection pertaining to setting aside the abatement order as passed in the suit as the application seeking condonation of delay bearing enquiry application No. 14 of 2006 is pending. It further appears that the said application is pending since 2006. The learned District Judge shall dispose of the said application bearing enquiry application No. 14 of 2006 as

expeditiously as possible, preferably within a period of three months from the date of receipt of this order. All points kept open. Order accordingly.

5. Writ petition is disposed of.

(V. K. JADHAV, J.)

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