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

WRIT PETITION NO.821 OF 2020

Gangaprasad Chetnarayan Mishra and Ors. ... Petitioners

Versus

Shah Babulal Khimji (since deceased)

1.a Laduben Babulal Shah and Ors. ... Respondents

Mr. Sagar Talekar i/b Mr. S. R. Agarkar, for the Petitioners.

Mr. Dinesh Shah, for the Respondents.

CORAM : REVATI MOHITE DERE, J.

DATE : 30th JANUARY, 2020

P.C. :

1. Heard learned Counsel for the parties.
2. By this petition, the petitioners have impugned the order dated 1st August, 2019, passed by the learned Ad-hoc Judge and Asst. Sessions Judge, City Civil Court, Greater Mumbai in Notice of Motion No.791 of 2018, in Suit No.4828 of 2018, by which the learned Judge was pleased to reject the petitioners' Notice of Motion filed for condoning delay of 130 days in carrying out the amendment as per the order dated 11th September, 2017, passed in Chamber Summons No.1515 of 2016.

3. Learned Counsel for the petitioners submits that the petitioners had shown sufficient cause for condoning the delay of 130 days and as such the learned Judge ought to have condoned the said delay, which was neither deliberate nor intentional.

4. Learned Counsel for the Respondents opposed the petition and submitted that no interference was warranted in the impugned order.

5. Perused the papers. The petitioners are the original plaintiffs who had filed a suit, being Civil Suit No.4828 of 2018 in the City Civil Court, Greater Mumbai, as against all the Respondents/Defendants. It appears that Halai Bhranmakshatriya Panch Trust had filed chamber summons being Chamber Summons No.1515 of 2016 in the said Suit for impleading them as party defendant. The trial Court was pleased to allow the said Chamber Summons vide order dated 11th September, 2017. As the amendment was not carried out within the stipulated period, as directed by the trial Court, the petitioners filed a Notice of Motion, being Notice of Motion No.791 of 2018 and sought condonation of delay of 130 days caused in carrying out the amendment, as per the order dated 11th September, 2017, passed in the aforesaid chamber summons. According to the petitioner no.2 he could not carry out the amendment as he had shifted

to his native place in Uttar Pradesh. It is urged by the learned counsel for the petitioners that the petitioners had appointed Haresh Shah as their constituted attorney, however, their constituted attorney did not take any steps to carry out the amendment, though he was authorized to do so. He submitted that when the petitioners contacted their advocate in December, 2017, they learnt about the order passed in Chamber Summons, pursuant thereto, the petitioners changed their constituted attorney and filed the Notice of Motion seeking condonation of delay in amending the plaint. Affidavit-in-support of Notice of Motion shows sufficient cause for condoning the delay of 130 days in carrying out the amendment as directed by the trial Court vide order dated 11th September, 2017.

6. In view of the aforesaid, the impugned order dated 1st August, 2019, passed by the learned Ad-hoc Judge and Asst. Sessions Judge, City Civil Court, Greater Mumbai in Notice of Motion No.791 of 2018, in Suit No.4828 of 2018 cannot be sustained and the same is quashed and set aside, subject to the petitioners paying costs of Rs.1,000/- to the Respondents, within two weeks from today.

7. Accordingly, the delay of 130 days caused in carrying out the amendment is condoned. The petitioners to carry out the amendment within

two weeks from today, as per order dated 11th September, 2017.

8. Petition is accordingly disposed of in above terms.
9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.