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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9555 OF 2019

Vitthal Ramchandra Kharat

....Petitioner

V/s.

Savita Haridas Ghode and Ors

.....Respondents

Mr. Vishwanath S. Talkute for the Petitioner

Mr. Balwant Salunkhe i/b Mr. Ashok Metkari for Respondent nos. 1 to 3

CORAM : NITIN W. SAMBRE, J.

DATE: MARCH 11, 2021.

P.C.:

1] Heard. Vide order of Civil Judge Junior Division, Sangola in R.C.S. No. 98 of 2005, preliminary Decree for partition was ordered on 12/05/2009. Feeling aggrieved, Petitioner preferred an Appeal. Said Appeal came to be dismissed on 11/12/2015 as the counsel for the Appellant remained absent. A prayer for condonation of delay in moving an Application for restoration was also rejected. As such, this Petition.

2] I am informed that Partition Decree is already executed. However, it is claimed that in view of change in the position of law, illegitimate child will also be entitled for share.

3] The cause cited in support of the condonation of delay appears to be suicide committed by two sons, one in 2011 and another in 2015 as a consequence of which track of the Appeal proceedings was lost. Apart from above, counsel for the Petitioner repeatedly remained absent before the Appellate Court.

4] In that view of the matter, even though objected, in my opinion, case for consideration is made out as sufficient cause as claimed is established. Orders impugned dated 11/12/2015 passed below Exh. 1 in Reg. Civil Appeal No. 71 of 2009 and 02/02/2019 passed in Misc. Civil Application No. 6 of 2018 are hereby quashed and set aside. Delay stands condoned subject to payment of cost of Rs. 10,000/- to be deposited before the Court below by 15/04/2021.

5] Parties agree to appear before the Appellate Court on 15/04/2021. Assurance of the counsel for the Petitioner that Petitioner shall not seek any adjournment before the Court below is accepted.

6] Petition stands disposed of in the above terms.

[NITIN W. SAMBRE, J.]