

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4845 OF 2022

**SURJIBAI DEVLIA GAVIT DEAD THROUGH HIS LEGAL HEIRS
KORJYA DEVLIA GAVIT AND OTHERS
VERSUS
NARSHI DAJYA GAVIT DEAD THROUGH HIS LEGAL HEIRS ARJUN
NARSHI GAVIT AND OTHERS**

...
Advocate for Petitioners : Mr. Rakesh Nemichandji Jain
Advocate for Respondent Nos. 1(A) to 1(C), 2(A) to 2(C), 3, 5 &
6(B) : Mr. J. R. Shah
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 07th OCTOBER, 2022

PER COURT :

1. Suit for partition and separate possession filed by petitioners' mother was dismissed on merits, on 27/04/2007. This decision of trial Court is challenged by filing Civil Appeal No.17/2007, on 21/06/2007. Thereafter, it was revealed that petitioners' mother is expired on 02/05/2007 i.e. even before institution of appeal. Petitioners, therefore, appeared in the said appeal and filed Vakalatnama of their advocate and application Exhibit-10 for setting aside abatement order and bringing legal heirs of appellant (their mother) on record. After hearing, this application is rejected on merits by District Judge-1, Nandurbar vide order dated 16/02/2010.

2. Petitioners, thereafter, filed Civil Misc. Application No.72/2018, seeking condonation of delay of 11 years and 06 months in filing appeal challenging judgment and decree dated 27/04/2007 passed in Regular Civil Suit No.10/2001, contending that petitioners were mentally depressed because of death of their mother and they used to go in other State for earning their livelihood for 8 months during a year, and also, they did not have sufficient finance to file appeal. Application is rejected on the grounds that no sufficient reasons are given for condonation of delay and earlier Civil Appeal No.17/2007 was rejected.

3. Having heard learned advocate for petitioners and learned advocate for respondents, this Court is of the opinion that there is no error or illegality in the order impugned in present petition.

4. It is a matter of record that application Exhibit-10 filed by petitioners in Civil Appeal No.17/2007, for setting aside abatement order and bringing legal heirs on record, was rejected on merits by order dated 16/02/2010. In that view of the matter, learned advocate for respondents was justified in submitting that filing of appeal challenging same decree would be barred by principles of *res judicata*. Vague and unaccepted ground is given by petitioners seeking condonation of inordinate delay of 11 years and

06 months. The appellate Court is, therefore, justified in rejecting application for condonation of such huge delay.

5. No case is made out by petitioners to warrant exercise of extraordinary writ jurisdiction. Writ petition, being devoid of merits, is dismissed.

(NITIN B. SURYAWANSHI, J.)

SVH