

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

WRIT PETITION NO.8350 OF 2021

Mr. Madhukar Anandrao Phalke and Anr. ..Petitioners

Versus

Hirabai Anandrao Phalke

Since deceased through her legal heirs

Mrs. Lata Arun Patil and Ors. ..Respondents

Mr. Pradeep S. Gole, for the Petitioners.

CORAM : NITIN W. SAMBRE, J.

DATE : 1st MARCH, 2022

PC.

1. In a suit for partition, plaintiff's application Exh.133 for condonation of delay in bringing legal heirs, Exh.135 for setting aside abatement and Exh.137 for bringing legal heirs on record came to be allowed vide impugned order which is questioned by the petitioners/defendants.

2. The contentions are, along with application Exh.135, there was no prayer for condonation of delay in setting aside abatement order. He would further claim that while order for condoning delay in bringing legal heirs of the plaintiffs/respondents on record, no sufficient cause was made out.

3. I have appreciated the said submissions in the light of

suit claim. The suit is for partition. That being so, parties to the suit have interest in common. Apart from above, once the Court below has ordered condonation of delay in bringing legal heirs on record, then it has to be presumed that Court below has appreciated the application for condonation of delay in bringing legal heirs on record and on the showing sufficient cause in filing application by the plaintiffs/respondents.

4. The contention that there was no sufficient cause, need not be gone into under Article 227 of the Constitution of India as the Court below has already justified the exercising its discretionary power.

5. As such, no case for interference in the writ jurisdiction of this Court is made out.

6. The petition as such fails, dismissed.

[NITIN W. SAMBRE, J.]