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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1036 OF 2022**

Haresh Pandurang Thakur

....Petitioner

V/s

Jamanibai Sukur Kadu

(since deceased through legal heirs)

and others

.....Respondents

Mr. Siddhesh Pilankar a/w Ms. Gargi Warunjikar for the Petitioner.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 03, 2022

P.C.:-

1] Regular Civil Suit No.33 of 1999 preferred by the Petitioner came to be decreed whereby declaration is ordered that the Plaintiff became owner of the suit property by way of adverse possession and Respondents/Defendants are restrained from interfering with the peaceful possession of the Plaintiff over the suit property.

2] During pendency of appeal, Appellant-Jamanibai expired on 31/12/2007. As such, on 14/2/2008, application came to be preferred vide Exhibit-20 informing death of the Appellant and time was sought for taking steps for bringing legal representatives on record, which prayer was allowed. Again, application for

adjournment was moved vide Exh.21 which was allowed. Application-Exhibit-22 alongwith the list of proposed representatives was placed on record and prayer was also made for condonation of delay in filing the application on which noticed was ordered. However, on 09/06/2008, said application was rejected on technical ground, as the application was not signed by the proposed legal representatives alongwith vakalatnama. On the very same day, another application-Exhibit-25 was filed, disclosing 12 legal heirs of the deceased, who are residents of other State. Out of 12 legal heirs, 4 legal heirs remained present before the Court and also filed their vakalatnama. Prayer for setting aside abatement, condonation of delay and bringing legal heirs on record was rejected by order dated 19/09/2008 on the ground that Application is not signed by all the legal heirs. As a consequence of above, present Civil M.A. No.36 of 2015 is taken out by the present Respondents who are Appellants in the Appeal for condonation of delay in bringing legal heirs on record, setting aside abatement and for bringing legal heirs on record, which is allowed by the impugned order dated 14/10/2021.

3] Heard learned Counsel for the Petitioner/original Plaintiff. He

would claim that since the earlier orders which are passed by the Court below rejecting prayer for condonation of delay in bringing legal representatives on record of late Jamanibai i.e. Respondent/Defendant on 09/06/2008 and thereafter on 19/09/2008, the Court below committed an error in granting application, as the Court cannot undo what has been done earlier by passing the order of rejection of similar prayer. He would claim that earlier orders would operate *res judicata*. According to him, delay is ordered to be condoned without any reasonable cause and that being so, order impugned is liable to be set aside.

4] I have considered the submissions.

5] It is rightly so observed by the Appellate Court in the impugned order that rejection of earlier prayers was on technical ground and not upon adjudicating claims on merits. Rather, attempt was made on the part of the Respondents/Appellants before the Trial Court to get themselves impleaded as legal heirs of the deceased Jamanibai immediately after her death. As such, it cannot be inferred that there was deliberate attempt on the part of the Respondents in causing

undue delay. The Court below exercised its discretion for good reasons and allowed the application by passing the order impugned. No error could be noticed in the order impugned. That being so, present Petition stands dismissed.

6] However, as a condition precedent, it is directed that the Respondents shall deposit costs of Rs 10,000/- in the Court below within six weeks from the date of service of the present order on the Respondents i.e. legal representatives of the Appellant before the Appellate Court.

(NITIN W. SAMBRE, J.)