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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4004 OF 2009

Hastimal Shejmal Jain through LR's and Others PETITIONERS

VERSUS

Laxman Savlu Joshi through LR's and Others RESPONDENTS

Mr. Sushil H. Tripathi, Advocate for the petitioners

Mr. Niranjana V. Dhane h/f Mr. Girish V. Wani, Advocate for
respondents 1B to 1G

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 10th JULY, 2023

ORDER :

1. The petitioners are aggrieved by order dated 17th June, 2008 passed by the learned Principal District Judge, Jalgaon in Miscellaneous Civil Appeal No. 16 of 2004, thereby allowing the appeal and setting aside orders passed below Exhibits-75 and 77 by the Trial Court in Regular Civil Suit No. 90 of 1983 against the respondents – appellants.

2. The petitioners are original defendants and respondents in Miscellaneous Civil Appeal No. 16 of 2004. The Miscellaneous Civil Appeal No. 16 of 2004 is filed by the present respondents – appellants challenging the orders passed by the learned Civil

Judge, Junior Division, Jamner, rejecting applications Exhibits-75 and 77 filed by the respondents - appellants. Application Exhibit-75 was filed for condonation of the delay caused in bringing respondents – appellants on record, as legal representatives of deceased – plaintiff in Regular Civil Suit No. 90 of 1983 and Exhibit-77, was filed for bringing them on record as legal representatives of the deceased plaintiff – Laxman Savalu Joshi.

3. By the impugned order, the Appellate Court has condoned the delay in making application for setting aside abatement order and the order of abatement of suit is set aside, by allowing application Exhibit-75 so also application Exhibit-77 is allowed and the respondents / appellants are directed to be brought on record as heirs / legal representatives of the deceased plaintiff. Necessary amendment is directed to be carried out within two weeks from the date of the order.

4. Heard learned advocate for the petitioners and the learned advocate for the respondents. Perused the memo of writ petition, documents annexed along with it, and the impugned order.

5. The Appellate Court has set aside the abatement order, being convinced by the "*sufficient cause*" shown by the

respondent – appellants, in view of the settled legal position that liberal approach is to be adopted while setting aside abatement order, by placing reliance in ***"Nilesh Vijay Deshmukh and another V/s Mathurabai Bhikanrao Deshmukh" 2005 (4) Mh.L.J. 481.***

6. Learned advocate for the petitioners submits that the observation of the Appellate Court that though notice of the appeal was served on the petitioners, nobody appeared for them, is contrary to the record. He, however, candidly admits that at the time of hearing of the appeal, the petitioners or their advocates were not present before the Court.

7. The Appellate Court has rightly considered the principles, as to what the expression "*sufficient cause*" means, laid down in ***"Collector, Land Acquisition, Anantnag and Another V/s Ms. Katiji and Others" AIR 1987 SC 1353.*** The Appellate Court has held that the delay on the part of the respondent – appellants was not deliberate or *mala fide*. In order to advance the cause of substantial justice, the Appellate Court has allowed the appeal and applications Exhibits-75 and 77.

8. There is no jurisdictional error or error of law committed by the Appellate Court, while passing the impugned order. There is no illegality or perversity in the order passed by the Appellate

Court. No case is made out by the petitioners to warrant interference in exercise of extraordinary writ jurisdiction. Writ petition, being devoid of merit, is dismissed. No costs. Interim relief stands vacated.

[NITIN B. SURYAWANSHI]
JUDGE

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