

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

WRIT PETITION NO.14668 OF 2023

MURLIDHAR ANANDA AGHAV
VERSUS
JIJABA ANANDA AGHAV DECEASED THROUGH LRS
CHANDRABHAGAJI JABA AGHAV AND OTHERS

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Advocate for Petitioner : Mr. Jadhav N. L.

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CORAM : SHAILESH P. BRAHME, J.

DATE : 4th DECEMBER 2023.

Per Court :

. Heard the learned Counsel for the petitioner.

1. This petition is directed against order dated 17.07.2023 passed below Exhibit-89 and 91 in RCS No.549/2015. The petitioner is original defendant and the respondents are plaintiffs in RCS No.549/2015 for partition and possession.

2. The respondent no.1 died on 14.02.2023. Application at Exhibit-89 is filed for condonation of delay for bringing heirs on record. Application at Exhibit-91 is filed bringing heirs on record. The delay of 60 days is condoned by the impugned order and heirs are permitted to be brought on record by another impugned order.

3. The learned Counsel for the petitioner submits that he was not

given opportunity to contest the applications. There was no say filed to application at Exhibit-91. He further submits that both the applications should not have been decided on the same day. He would submit that there is a dispute of the status of heirs of deceased respondent no.1. For want of proper opportunity, this could not be brought on record.

4. Learned Counsel has drawn my attention to the written statement to submit that there are disputed facts as stated in paragraph no.15. The status of first wife of deceased respondent no.1 – Chandrakala is disputed. In such scenario, the legal heirs which are brought on record, are not concerned with the controversy and they are not necessary parties.

5. When the application at Exhibit-89 for condonation of delay and application at Exhibit-91 are filed by the proposed heirs of deceased respondent no.1, orders of other side to file Say were passed. The petitioner has filed Say at Exhibit-94 to application at Exhibit-89. However, no Say is filed to application at Exhibit-91. By the impugned orders, both the applications are allowed.

6. There is delay of 60 days and sufficient reasons are assigned for the condonation of delay. I do not find any perversity or illegality in upsetting the impugned order below Exhibit-89. The learned Judge has taken pragmatic approach.

7. For allowing application at Exhibit-91, there was no hurdle as Say

was not filed. The petitioner chose not to file Say. It is consequential order, once delay is condoned. I do not find that a case is made out to interfere in the order below Exhibit-91.

8. The petitioner should have raised objections disputing the status of the legal heirs of the respondent or their locus to be impleaded in the suit. The petitioner has taken defence in the written statement. It is clarified that though the application at Exhibit-91 is allowed that does not preclude the trial Court in examining the entitlement of the heirs of the deceased respondent no.1 or examining their status.

9. The writ petition is dismissed with above clarification.

[SHAILESH P BRAHME, J.]

Najeeb.