

VRJ

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

**WRIT PETITION NO.10941 OF 2019**

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Sulabha Pranab Biswas & Ors.

... Petitioners

**V/s.**

Jayant Trimbak Patil & Ors.

... Respondents

Mr. Ganesh Bhujbal for the petitioners.

**CORAM : AMIT BORKAR, J.**

**DATED : NOVEMBER 4, 2023**

**P.C.:**

1. The petitioners, legal representatives of original plaintiff have filed present writ petition challenging order of the Trial Court dated 26<sup>th</sup> July 2018 rejecting their application to bring themselves on record.
2. The petitioners' predecessor filed Special Civil Suit No.196 of 2010 for removal of encroachment against defendant Nos.1 and 2.
3. During pendency of the suit, plaintiff died on 23<sup>rd</sup> August 2015.
4. The petitioners filed an application to bring themselves on record. There was delay of 625 days' in filing the application. However, according to the petitioners, petitioner No.2 was residing in America and, therefore, he was not available to sign the application. Moreover, applicant No.3 is residing in Mumbai and,

therefore, there was delay in filing application to bring themselves on record.

5. The Trial Court rejected the application holding that the reason furnished by the petitioners is not sufficient cause.

6. This Court on 25<sup>th</sup> February 2022 issued notice to the respondents. Office remark dated 4<sup>th</sup> August 2023 indicates that respondent Nos.1 and 2 are served. Though respondent No.3 is unserved, the relief prayed in the suit are only against defendant Nos.1 and 2, hence, presence of respondent No.3 is not required.

7. In the facts of the case and considering the relief prayed by the petitioners namely for removal of encroachment based on sale deed, in my opinion, the reasons pleaded by the petitioners constitute a sufficient cause for condonation of delay of 625 days. Hence, the Trial Court was not justified in rejecting such application.

8. Hence, following order:

a) The impugned order dated 26<sup>th</sup> July 2018 passed by the 5<sup>th</sup> Joint Civil Judge, Senior Division, Kalyan in Regular Civil Suit No.430 of 2012 below Exhibit-51 is quashed and set aside.

b) The application below Exhibit-51 in Regular Civil Suit No.430 of 2012 is allowed.

9. The writ petition stands disposed of in above terms. No costs.

**(AMIT BORKAR, J.)**