

VRJ

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

WRIT PETITION NO.10770 OF 2023

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Sitaram Maruti Kalokhe & Ors.

... Petitioners

V/s.

Prakash Hastimal Gadiya & Ors.

... Respondents

Mr. Drupad S. Patil with Mr. Balasaheb G. Ligade for
the petitioners.

Mr. Tukaram Shendge for respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 9, 2023

P.C.:

1. The petitioners who are defendants in Special Civil Suit No.600 of 2009 filed for specific performance of agreement are challenging order passed by the Trial Court in an application filed under Order 9 Rule 13 of the Civil Procedure Code, 1908 to condone the delay in filing application to bring heirs and legal representatives of original defendant No.7 on record.
2. The suit filed by respondent Nos.1 to 3 was decreed on 20th April 2012 directing the defendants to execute sale deed in plaintiffs' favour within two months.
3. The petitioners filed an application for setting aside ex-parte decree in 2013.

4. During pendency of said application, on 6th January 2021, defendant No.7 died due to infection of COVID-19. The rest of the petitioners, therefore, filed application for setting aside abatement and condonation of delay for bringing heirs and legal representatives of defendant No.7 on record. The reason mentioned in the application is that defendant No.7 died during COVID-19 pandemic. The defendants were not aware about the death of defendant No.7 and were also not aware about the heirs and legal representatives of defendant No.7. The petitioners, therefore, prayed for condonation of delay of 1 year 8 months in filing application to bring heirs and legal representatives of defendant No.7 on record. The Trial Court rejected the application holding that the petitioners failed to explain inordinate delay of 1 year 8 months in filing the application.

5. Considering the date of death of defendant No.7 i.e. 6th January 2021 and the reason mentioned in the application that he died due to COVID-19 infection, the Court was required to adopt a sensitive approach considering prevalent situation during COVID-19 pandemic. Though the COVID-19 pandemic receded in March 2022, the Apex Court in Miscellaneous Application No.21 of 2022 extended period of limitation from 15th March 2020 till 28th February 2022. Therefore, in my opinion, the Court ought to have adopted liberal approach in considering application for setting aside abatement to bring heirs and legal representatives of defendant No.7 on record. Therefore, in my opinion, the Trial Court was not justified in rejecting application below Exhibit-14 and Exhibit-38.

6. Hence, following order:
 - a) The impugned orders passed by the Trial Court are quashed and set aside.
 - b) The applications below Exhibit-14 and Exhibit-38 in Civil Miscellaneous Application No.308 of 2016 are allowed.
7. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)