



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

913 WRIT PETITION NO. 9753 OF 2024

**ABDUL LATIFKHA BAKHTAWARKHAN PATHAN
THROUGH LRS SURAYYABI LATIFKHAN PATHAN
AND OTHERS
VERSUS
MEHUL DILIP SARAF AND OTHERS**

...
Advocate for the petitioners : Mr.S.P.Pandit
Advocate for Respondent no.1 : Mr.S.P.Shah
...

CORAM : ARUN R. PEDNEKER, J.

DATE : 08.10.2024

P.C. :

1] By the present petition, the petitioners are challenging the order dated 28.06.2024 passed by the Joint Civil Judge Senior Division, Shahada, below Exh.1 in Civil Misc.Application No.11/2023 whereby the trial Court has allowed the application.

2] The prayer made in the application at Exh. 1 is noted below :

The prayer is made to set aside the abatement order by condoning the delay of 96 days.

In the instant case, the suit is disposed of as abated. Application was filed for restoration of Regular Civil Suit No.54/2012 with an prayer for condonation of delay and the same is allowed by the impugned order dated 28.06.2024.

3] It is the contention of the learned counsel for the petitioners that the respondents ought to have filed two separate applications, namely, one application for condonation of delay and another application for setting aside the abatement order. The learned counsel further submits that sufficient opportunity was not given to the petitioners to defend the prayer made in application for setting aside abatement before passing the impugned order.

4] On perusal of the application at Exh. 1, it appears that, the prayer for condonation of delay and prayer for setting aside the abatement, are incorporated in one application. The learned counsel for the petitioner is not able to satisfy me as to what grounds the abatement order cannot be set aside once the delay is condoned. Since the prayer is composite one and the order is reasonable, I do not see any reason to interfere with the impugned order. The present Writ Petition is accordingly dismissed.

[ARUN R. PEDNEKER]
JUDGE

DDC