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905 sa 333.95

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

**905 SECOND APPEAL NO. 333 OF 1995
with CIVIL APPLICATION NO. 5227 OF 1995
IN SA/333/1995
with CIVIL APPLICATION NO. 11292 OF 2023
IN SA/333/1995**

**AMEENABEE TURAUDDIN.
VERSUS
SIRAJ AHEMADALI SAFADARALI AND ANOTHER.**

.....
Advocate for Appellant : Mr. S.T. Jadhav h/f. D.N. Suryawanshi.
Advocate for Respondents : Mr. Sawari Patil h/f. M.M. Patil (Beedkar)
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**CORAM : Y.G. KHOBRADE, J.
DATE : 19.03.2024**

PC.:-

1. By civil application no.5227/1995, the appellant original plaintiff prayed for temporary injunction restraining the defendants / respondent from interfering with her peaceful possession over the suit land Gut No.24 ad-measuring 1 Acre 31 Gunthas situated at village Pendgoan, Tq. & Dist. Beed. The application is pending since 1995 but the learned counsel for the appellant failed to argue the application till date. It is needless to say that the present appellant is the original plaintiff in RCS No.462/1988, wherein the plaintiff prayed for perpetual injunction against the defendants from causing obstruction to her possession over the suit land. After a full fledged trial the

learned trial Court passed the judgment and decree on 15.04.1993 and dismissed the suit of the plaintiff. Being aggrieved by the said judgment and decree the plaintiff filed RCA No.111/1993. After hearing both the sides the learned First Appellate Court passed the impugned judgment and order on 11.01.1995 and dismissed the appeal.

2. Therefore, at this juncture I do not find that the appellant-plaintiff is *prima facie* having a case or balance of convenience lies in her favour or any substantial grounds are set out to restrain the defendants. Therefore, the present application deserves to be dismissed. Accordingly it is dismissed.

3. By civil application no.11292/2023 the applicants pray for permission to bring the legal heirs of deceased appellant no.1B on record, so also, prayed for condonation of delay of 835 days caused for bringing the legal heirs on record as well as setting aside the abatement. The learned counsel for the respondents resisted the application on the ground that the delay has not been properly explained. However, considering the reasons set out in the application, I am inclined to allow the present application and proceed to pass the following order:

ORDER

i) The application is allowed.

- ii) The delay of 835 caused in bringing legal heirs of deceased appellant no.1b on record is hereby condoned.
 - iii) The abatement, if any, is hereby quashed and set aside.
 - iv) The appellants are permitted to bring the legal heirs of appellant no.1b on record.
 - v) Necessary amendment be carried out within two weeks from today.
 - vi) If it is made clear that if the appellant fails to carry out amendment within the stipulated period in that event, application shall stand dismissed without reference to the Court.
 - vii) Applicants to pay the deficit Court fees in C.A. No.11292/2023.
4. Place the second appeal for final hearing as per its turn.

[Y.G. KHOBRAGADE, J.]