

VRJ

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

WRIT PETITION NO.6273 OF 2024

VAIBHAV
RAMESH
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Date: 2024.06.15
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Shivaji Krishna Patil

... Petitioner

V/s.

Shankar Krishna Nikam Since Deceased
Through Legal Heirs & Ors.

... Respondents

Mr. Anant Vadgaonkar for the petitioner.

CORAM : AMIT BORKAR, J.

DATED : JUNE 14, 2024

P.C.:

1. The judgment debtor suffering decree for partition is challenging order passed by the Court in an application filed under section 152 of the Civil Procedure Code, 1908 (hereafter referred to as “the CPC”), which allows an application under Order 22 Rules 3, 4 and 9 of the CPC to set aside amendment and to bring legal representatives of original judgment debtor on record.

2. Learned advocate for the petitioner submits that provisions of Order 22 Rules 4 and 9 of the CPC are inapplicable to proceedings under section 152 of the CPC as such proceedings cannot be termed as proceedings covered by under Order 22 of the CPC. He further submits that Order 20 Rule 12 of the CPC specifically excludes applicability of Order 22 of the CPC to the execution proceedings. According to him, therefore, the

proceedings under section 152 of the CPC do not contemplate exercise of power under Order 22 Rules 4 and 9 of the CPC. According to him, therefore, the delay in filing said application could not have been condoned without issuing notice. As paragraph No.4 of the application for condonation of delay indicates that the applicants had knowledge of date of petitioner's predecessor.

3. Hence, issue notice to the respondents, returnable on **26 July 2024**.
4. In addition to Court notice, the petitioner is permitted to serve respondents privately.

(AMIT BORKAR, J.)