



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

WRIT PETITION NO.9475 OF 2025

WACHHHALABAI W/O AMBU CHITALKAR AND ORS.

VERSUS

MAHADU DHULA CHITALKAR AND ORS.

...
Mr. Sachin Thorat h/f Mr. Y. G. Thorat, Advocate for the
Petitioners.

Mr. A. N. Nagargoje, Advocate for Respondent Nos.1B to 1F and 2.

...

CORAM : S. G. CHAPALGAONKAR, J.

Reserved On : 08th AUGUST, 2025.

Pronounce On : 13th AUGUST, 2025.

ORDER:-

1. The present petition takes exception to orders dated 01.07.2025 passed below Exhibits 36, 38 and 97 by District Judge-1, Sangamner in Civil M.A. No.52/2016.

2. The petitioners are original defendants in Regular Civil Suit No.594/1986. The suit was filed for partition and separate possession and mesne profit before Civil Judge Junior Division at Sangamner. The suit was decreed vide judgment and order dated 09.08.1996 against petitioner nos.1 to 3. Aggrieved by judgment and decree passed by Trial Court, petitioners filed Regular Civil Appeal No.365/1996 before learned District Judge at Shrirampur. However, Appeal was dismissed for want of prosecution on

07.03.2000. The petitioners filed Civil M.A. No.52/2016 for restoration of Appeal alongwith application for condonation of delay. However, during pendency of Civil M.A. No.52/2016, respondent nos.3A, 3A(1) and 3A(5) expired on 28.08.2019, 23.03.2020 and 17.04.2018 respectively.

3. The petitioners filed application below Exhibits 38, 36 and 97 in Civil M.A. No.52/2016 for bringing legal representatives of deceased respondents alongwith application for setting aside abatement and condonation of delay of approximately three years. However, learned District Judge at Shrirampur vide his order dated 01.07.2025 rejected all three applications.

4. The learned Advocate appearing for petitioners submits that petitioners are shepherd and requires to stay away from their native places. They are also ill-literate and sans knowledge of procedural aspects of Court cases. The learned Appellate Court ought to have adopted liberal approach and condoned delay, so also allowed applications for setting aside abatement order and bringing legal representatives on record.

5. Per contra, Mr. Nagargoje, learned Advocate appearing for contesting respondents opposes prayers in writ petition.

6. Having considered submissions advanced, it can be observed that parties are litigating over immovable property in a suit for partition and separate possession. In such suit, plaintiffs' and defendants' stands on same footing. All plaintiffs are defendants and all defendants are plaintiffs. The adjudication of dispute is possible only when all parties are before Court. In this background, although applications filed by petitioners for bringing legal representatives on record was delayed by almost 2 to 4 years, it was essential to condone delay and bring legal representatives of deceased respondents on record, so that final and effective adjudication of dispute can be made. No doubt that delay is not technically explained by giving reasons for each and every day. However, delay does not appear to be intentional. The petitioners have not derived any advantage by making delay. At this stage reference can be given to observations of Supreme Court of India in case of ***Collector, Land Acquisition, Anantnag & Anr. Vs. Katiji & Ors.***¹, which reads thus:

“4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.”

7. In that view of the matter, to secure ends of justice and complete adjudication of *lis* before Court, so also to avoid multiplicity of litigations, liberal approach needs to be adopted.

¹ (1987) 2 SCC 107.

Similarly, respondents/original plaintiffs are required to be adequately compensated. In result, following order is passed:

ORDER

- a. Writ Petition is allowed in terms of prayer Clauses (B), (C) and (D) subject to payment of cost of Rs.15,000/- to contesting respondent Nos.1B to 1F and 2.
- b. The cost to be deposited with First Appellate Court within period of four weeks from today.
- c. On deposit of cost, it be released in favour of respondent nos.1B to 1F and 2.
- d. In case of failure to deposit cost, impugned order passed by learned District Judge shall govern the proceeding.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/August-2025