



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

88 WRIT PETITION NO.2652 OF 2019

Machindra Dadarao Mate and Anr.

Versus

Vishwanath Sopan Mate and Ors.

....

Mr. R. K. Ashtekar, Advocate for the Petitioners

Mr. P. S. Chavan, Advocate for Respondent Nos.1 and 2

Mr. V. M. Vibhute, Advocate for Respondent No.3-C

....

WITH

CIVIL APPLICATION NO.12682 OF 2021

CIVIL APPLICATION NO.2290 OF 2026

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CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 25.03.2026

PER COURT :

[I] Order in Civil Application No.2290/2026 :

1. By this application, the applicants seek permission to bring the legal heirs of Respondent No.2 and Petitioner No.2 on record by condoning the delay.

2. Considering the averments made in the application, application is allowed in terms of Prayer Clause – ‘B’. Amendment to be carried out within a period of one week.

[II] Order in Writ Petition No.2652/2019 :

1. Heard the learned counsel for the respective parties.

2. The petitioners are aggrieved by the order dated 19.12.2018 passed below Exhibit-1 by the Ad-hoc District Judge, Osmanabad in RCA No.68/2010, whereby appeal filed by the petitioners came to be dismissed against respondent no.3(A) as appropriate steps for serving him were not taken.

3. The learned counsel Mr. Ashtekar for the petitioners submits that the petitioners, being aggrieved by the order dated 14.01.2010 passed by the Civil Judge, Senior Division, Osmanabad in RCS No.154/2008, filed Regular Civil Appeal No.68/2010. He submits that during the pendency of the appeal, respondent no.3 expired and his legal heirs were brought on record on 13.02.2017. Notices were issued, but the notice to respondent no.3(A) was returned unserved on the ground that door was locked. Thereafter, an application was filed for re-issuance of summons. The petitioners state that on 19.12.2018, when the matter was called out, the learned counsel representing the petitioners was absent, and therefore the Appellate Court dismissed the appeal for want of prosecution on the ground that steps were not taken against the unserved respondent no.3(A). He submits that the Appellate Court has adopted a very hyper-technical approach.

4. The learned counsel Mr. P. S. Chavan for respondent nos.1 and 2 and the learned counsel Mr. Vibhute for respondent no.3-C support the order passed by the Appellate Court by contending that, though sufficient opportunity was given to take steps against the unserved respondent, the petitioners – appellants failed to do so. Therefore, the Appellate Court has rightly dismissed the appeal.

5. Having heard the learned counsel for the petitioners and upon perusal of the impugned order, I find that the appeal was dismissed for want of prosecution on the ground of failure to take necessary steps. In the interest of justice, I am inclined to allow the writ petition by restoring the appeal and setting aside the order passed by the Appellate Court.

6. In view thereof, the writ petition is allowed. The order dated 19.12.2018 passed below Exhibit-1 by the Ad-hoc District Judge, Osmanabad in RCA No. 68 of 2010 is quashed and set aside. Regular Civil Appeal No. 68 of 2010 is restored to its original file.

7. All the learned counsel have jointly prayed that, considering the fact that the appeal is of the year 2010, appropriate directions be issued to the Appellate Court to decide the appeal within a stipulated period.

8. In view of the above, the Appellate Court is directed to decide the appeal within a period of six months from today.

9. Pending civil applications, if any, stand disposed of.

[SIDDHESHWAR S. THOMBRE, J.]