

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

**Civil Application No.9351 of 2012
And
Civil Application No.1004 of 2013
In
Second Appeal No.480 of 2006**

Maqbool Mohammad Sayyad
Died through legal representatives. .. **Applicants.**

Versus

Popat Mahammad Sayyad
And Others. .. **Respondents.**

Shri. V.S. Bedre, Advocate, for applicants.

S/Shri. N.C. Garud and Parag V. Barde, Advocates, for respondents.

CORAM: T.V. NALAWADE, J.

DATE : 2nd SEPTEMBER 2015

ORDER:

1) The first application is filed for condonation of delay of 1771 days caused in bringing legal representatives of deceased respondent No.7 on the record and for setting aside the order of abatement and

for bringing legal representatives on the record. The second application is filed for condonation of delay of 2060 days caused in filing application to bring legal representatives of respondent No.6-C on the record and for setting abatement etc. In the first proceeding learned counsel Shri. Barde is representing the proposed legal representatives and he has strongly opposed the application by contending that the applicant is relative of the deceased respondent slept over the matter. He did not inform the Advocate and steps are not taken in time so delay cannot be condoned. In the second proceeding nobody has tuned up though the proposed legal representatives are served with the notice of the proceeding.

2) The suit was filed for partition. In view of the nature of dispute the cause of action still survives. In view of these circumstances and ordinarily in appeal proceedings litigants do not remain in contact with the counsel, this Court holds that delay deserves to be condoned in both the matters.

3) Both the applications are allowed. Delay is condoned. Abatement in respect of deceased respondents is hereby set aside. Permission is granted to bring the legal representatives on the record. Learned counsel waives notice for legal representatives of respondent No.7. Amendment is to be carried out immediately in respect of these respondents in appeal memo. Notice to the legal representatives in the appeal made returnable on 5th October 2015.

Sd/-
(T.V. NALAWADE, J.)

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