

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

26. CA/9384/2012 In SA/429/1993

CHANGDEO BABU GAIKWAD @ DADA BABURAO GAIKWAD DIED THROUGH L.Rs.
V/S
BHASKAR RATHNAKAR GAIKWAD AND ORS

Mr. S.S. Kulkarni h/f. Mr. S.D. Kulkarni, Advocate for applicants.

Mr. R.R. Shaikh, Advocate for respondent No. 4.

CORAM : T.V. NALAWADE, J.
DATED : 19th August, 2015.

ORDER :

1. The application is filed for condonation of delay of 99 days caused in filing application to come on record the legal heirs of sole deceased appellant. Relief is also claimed for setting aside the abetment of the matter itself, if any, due to the death of sole appellant. Both the sides are heard.

2. During arguments, it was submitted that there is the record to show that the respondent No. 2 - Prabhakar Ratnakar Gaikwad is also dead now. The learned counsel for respondent No. 4 - Shivaji Vithoba Gaikwad submitted that he has purchased the property and so, he will be representing the interest of deceased respondent No. 2 - Prabhakar Gaikwad as he stands in his shoes and so, there is no need to issue notice to them or bring the legal heirs of deceased respondent No. 2 Prabhakar Gaikwad, who are already on record.

3. It can be said that delay of 120 days is caused in making application for setting aside abetment and the delay of 99 days has caused in filing application to come on record the legal heirs of sole appellant. In view of the contents of the application and as the parties rarely remain in touch with the learned counsel for appellant, this Court holds that sufficient cause is shown.

4. In the result, the application is allowed. The abetment of the appeal is set aside by condoning delay caused. The delay caused in filing application to come on record the legal heirs of deceased appellant is allowed by condoning delay and they are allowed to come on record to prosecute the appeal. As in view of the nature of dispute, there is no need to serve the notice on respondent Nos. 5 and 6 as they are the parents and sister and mother of the present applicants. The matter will be heard even if they do not turn up. So, the application is allowed in aforesaid terms. Amendment is to be carried out prior to the next date. List the matter in the category of final hearing on 4.9.2015.

[T.V. NALAWADE, J.]

ssc/