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

CIVIL APPLICATION NO. 7643 OF 2012
IN SA/41/1996
WITH
CIVIL APPLICATION NO.7644/2012
IN SA/41/1996

GULAB MOHANLAL DARAK DIED THR LRS OMPRAKASH GULAB DARAK
VERSUS
MADHAVRAO SUNDARRAO DESHMUKH DIED THR LRS PRAYAGBAI
MADHAVRAO DESHMUKH AND ORS

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Advocate for Applicant : Mr.P.P.Kothari h/f Mr.Satyajit Bora

Advocate for Respondents : Mr.P.K.Ippar h/f Mr.Salunke Sudarshan J. for
R/1a,1c, 1d & 1e.

Mr.V.D. Kadam for R/1b.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th April, 2015

Per Court:

(a) Civil Application No.7643/2012:-

1 By this Civil Application, the Applicants pray for condonation of 2223 days delay caused in filing this Civil Application for bringing the legal heirs of the deceased Appellant on record.

2 Second Appeal No.41/1996 was admitted by this Court by order dated 07.02.1996. The substantial question of law was framed. The

sole Appellant has passed away. All the Respondents are served.

3 Mr.Bora, learned Advocate appearing for the Applicants, submits that the Second Appeal was in fact ripe for final hearing as it was admitted. There was no reason for the learned Advocate to keep in contact with the Appellant since the Appellant was required to attend the Court hearing only when the matter was to be heard. The legal heirs of the deceased Appellant were not aware about the pending proceedings. The litigation is going on since 1967.

4 Mr.Bora further submits that the delay is neither intentional nor deliberate as the Applicants gain no advantage from delaying the matter.

5 Learned Advocates appearing for the Respondents have opposed the application on the ground that the reasons cited are not satisfactory and do not support the prayers made in the application.

6 Taking an overall view of the fact situation recorded above, I am inclined to allow this Civil Application. The same is, therefore, allowed. The delay of 2223 days is condoned subject to the Applicants depositing costs of Rs.5000/- (Rupees Five Thousand) in this Court within

a period of FIVE WEEKS from today. The order of abatement, if any, stands set aside.

7 After depositing costs, the Respondent Nos.1(a) to 1(e) shall withdraw the said amount in equal shares. The Applicants shall bring the legal heirs of the deceased Appellant on record in the Second Appeal within TWO WEEKS from the date of depositing costs.

8 In the event of non compliance of this order, the same shall stand recalled and then this Civil Application shall stand rejected.

(b) Civil Application No.7644/2012:-

1 By this Civil Application, the Applicants pray for condonation of 965 days delay caused in filing this Civil Application for bringing the legal heirs of the sole deceased Respondent on record.

2 Second Appeal No.41/1996 was admitted by this Court by order dated 07.02.1996. The substantial question of law was framed. The sole Respondent has passed away. The legal heirs of the sole Respondent are served.

3 Mr.Bora, learned Advocate appearing for the Applicants,

submits that the Second Appeal was in fact ripe for final hearing as it was admitted. There was no reason for the learned Advocate to keep in contact with the Appellant since the Appellant was required to attend the Court hearing only when the matter was to be heard. The Appellant has also passed away. The legal heirs of the deceased Appellant were not aware about the pending proceedings. The litigation is going on since 1967.

4 Mr.Bora further submits that the delay is neither intentional nor deliberate as the Applicants gain no advantage from delaying the matter.

5 Learned Advocates appearing for the Respondents have opposed the application on the ground that the reasons cited are not satisfactory and do not support the prayers made in the application.

6 Taking an overall view of the fact situation recorded above, I am inclined to allow this Civil Application. The same is, therefore, allowed. The delay of 965 days is condoned subject to the Applicants depositing costs of Rs.1000/- (Rupees One Thousand).

7 Learned Advocates appearing for the Respondents graciously submit that the costs be donated to the Advocate Association's Bar Library,

High Court, Aurangabad.

8 As such, the Applicants shall deposit the said costs of Rs.1000/- (Rupees One Thousand) with the Advocate Association's Bar Library, High Court, Aurangabad within a period of FIVE WEEKS from today. The order of abatement, if any, stands set aside.

9 After depositing costs, the Applicants shall bring the legal heirs of the deceased Respondent on record in the Second Appeal within TWO WEEKS from the date of depositing costs.

10 In the event of non compliance of this order, the same shall stand recalled and then this Civil Application shall stand rejected.

(RAVINDRA V. GHUGE, J.)