

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

**CIVIL APPLICATION NO. 10394 OF 2011
IN
SECOND APPEAL NO. 1068 OF 2005**

Balasaheb Nathu Mhase
& others

... Applicants

VERSUS

Deorao Nathu Mhase
& others

... Respondents

.....
Mr. A.H. Kasliwal , Advocate for Applicants

CORAM : RAVINDRA V. GHUGE, J.

DATED : 18th MARCH, 2015

PER COURT :

1. By order dated 01-10-2013 this Court issued *Rule* and notice to the legal representatives of the deceased respondent No. 2. Office report indicates that all the opponents are served. Legal representatives of deceased respondent No. 2, 3 and 5 to 7 have not chosen to enter an appearance. None present for respondent Nos. 1 and 4.

2. Shri Kasliwal, learned Advocate submits that the opponents were under an obligation to intimate the appellant about the

demise of respondent No. 2 in view of order XXII Rule 10-A of the CPC. The said duty was not discharged by the opponents. The applicant himself, upon getting knowledge of the demise of respondent No. 2, obtained the death certificate from the competent authority on 12-07-2011 which is at page 7 of the Civil Application.

3. Shri Kasliwal explains that the over writing appearing on the death certificate is at his hands since it was a faint copy and therefore, the text appearing has been over written so as to be legible .

4. Shri Kasliwal submits that after obtaining the death certificate dated 12-07-2011, this Civil Application has been filed on 03-08-2011. As such, there is no delay.

5. Record reveals that the order of abatement as against the deceased respondent No. 2 has been passed on 06-02-2009. Apparently, the Civil Application has been filed after two years and six months.

6. Taking an over all view of the fact situation, the delay caused in filing this application is condoned subject to the

applicant Nos. 2, 3, 4 depositing cost of Rs. 7,500/- in this Court. The order of abatement dated 06-02-2009 therefore stand set aside. The Civil Application is allowed.

7. Failure to pay costs shall result in the recalling of this order and the Civil Application shall stand rejected by restoring the order of abatement dated 06-02-2009.

8. On payment of costs, the applicants shall bring the respondent Nos. 2 (i to vii) on record within three weeks therefrom.

9. Since none of the respondents have remained present in the matter, the amount of costs imposed on the applicants shall be paid to the High Court Advocates' Bar Library, Aurangabad within a period of four weeks.

(RAVINDRA V. GHUGE, J.)