

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

CIVIL APPLICATION NO. 9375 OF 2015
IN
SECOND APPEAL NO. 129 OF 2003

Mainabai W/o Rangnath Patankar ... Applicant

Versus

Kundlik S/o Dhondiba Kaladhone
Since deceased – through proposed
legal representatives
1-A. Vishnu S/o Kundlik Kaldhone and others ... Respondents

WITH
CIVIL APPLICATION NO. 9376 OF 2015
IN
SECOND APPEAL NO. 129 OF 2003

Mainabai W/o Rangnath Patankar ... Applicant

Versus

Kundlik S/o Dhondiba Kaladhone
Since deceased – through proposed
legal representatives
1-A. Vishnu S/o Kundlik Kaldhone and others ... Respondents

Mr. S. D. Tawshikar, Advocate for applicant
Mr. Vivek Bhavthankar, Advocate for respondents No. 1A, 1B,
1C-1, 2A and 2B,

CORAM : SUNIL P. DESHMUKH, J.
16TH NOVEMBER, 2015

ORDER:

1. Learned counsel for the applicant contends that after coming to know in March, 2015 about death of respondent No.1, lot of time had been consumed in searching and looking for heirs of respondent No.1 and on getting knowledge of the same,

immediately application has been filed, but in the process abatement of appeal against respondent No.1 has been caused.

2. It is further being submitted that had the intimation been given by the advocate for other side about the death of respondent No.1, delay and abatement could have been avoided and for said purpose he relies on Rule-10(A) of Order XXII of the Code of Civil Procedure, 1908.

3. Learned counsel for respondents, however, submits that by operation of law matter stands abated after expiry of 90 days from the date of death of respondent No.1 and even during that period when it was realised by the applicant about death, no prompt action had been taken by the applicant, albeit, he is not in a position to dispute the intention and veracity of the submissions on behalf of the applicant.

4. In view of the same and since delay in the process appears to be not much, I deem it appropriate to allow application for setting aside abatement.

5. Civil application No. 9375 of 2015 as such, stands allowed. Abatement of second appeal against respondent No.1 stands set aside.

6. Consequently, civil application No. 9376 of 2015 seeking leave to bring legal representatives of respondent No.1 on record and condonation of delay in the same also stands allowed.

7. Both the civil applications stand disposed of.

SUNIL P. DESHMUKH, J.

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