

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

**CIVIL APPLICATION NO. 15685 OF 2015
IN
SECOND APPEAL NO. 1705 OF 2005**

Venkat Tukaram Rathod
Since deceased through L.Rs. And ors. ...APPLICANTS

versus

Sham Balkrishna Selukar and others ...RESPONDENTS

.....
Mr. S.S. Kazi, Advocate for applicants
Mr. S.V. Kuptekar, Advocate holding for
Mr. V.D. Salunke, Advocate for respondents No. 8/1 to 8/3 and 9 to 13
.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 18th DECEMBER, 2015

Order :-

1. Heard learned counsel for parties.
2. Learned counsel for applicant states that second appeal had been admitted long back and during its pendency appellant No. 2 Venkat Tukaram Rathod died. Legal heirs of deceased appellant No. 2 were unaware about pendency of the litigation and additionally they are not educated and are illiterate. They would hardly be in a position appreciate implication of non appearance in the matter. In the circumstances, while they became aware of the pendency of litigation, after the death of appellant, nor, they have immediately filed application for bringing them on record as legal heirs of deceased appellant No. 2. There is technical delay in filing the application. The

delay caused in preferring the application is neither intentional nor deliberate. Learned counsel, therefore, requests that application be sympathetically considered and to allow the same.

3. Learned counsel for respondents submits that the reasons cannot be said to be plausible. He, however, is not in a position to challenge veracity of submission with regard to applicant being unaware about the pendency of litigation, being uneducated/illiterate legal heir of deceased and for that matter they are not in a position to appreciate implication of appearance and non appearance. He further is not in a position to overcome the submission with regard to that delay being unintentional or deliberate.

4. In view of aforesaid, civil application, for the reasons contained therein stands allowed in terms of prayer clauses "B" and "C" subject to payment of costs of Rs. 500/- to be paid to other side as early as possible.

5. Civil application, as such, stands disposed of accordingly.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK