

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.264 OF 2015
IN
SECOND APPEAL NO.715 OF 2008**

Shri Tukaram Sidhappa Pujari D/H,
Shri Gundappa Tukaram Pujari and Ors.

.. Applicants

VS.

Guruningappa Hrappa Jirankalgi and Ors.

.. Respondents

Mr.Amey Patil for the applicant

Mr.Bhooshan R. Mandlik for the respondent

CORAM : K.K.TATED, J.
DATED : 06/10/2015

PC:

- 1 Heard the learned counsel for the parties.
- 2 This application is preferred by legal heirs of sole appellant for joining them as party in the Second Appeal on the death of sole appellant.
- 3 The learned counsel for the applicant submits that sole appellant expired on 31.3.2014. He submits that they had no knowledge about the pendency of the present Second Appeal. He submits that legal heirs of appellant contacted their local lawyer in the second week of January 2015 and at that time, they learnt about the pendency of the Second Appeal. At that time, local lawyer informed that they have to

prefer appropriate application for joining them as party in the Second Appeal as legal heirs. Thereafter, they applied for certified copy of death certificate and filed the present application. Hence, there is a delay in preferring the present Civil Application.

4 The learned counsel for the applicant submits that applicant has good chance of success in the present Second Appeal. He submits that if delay is not intentional but same is occurred for want of knowledge about the pendency of the present Second Appeal filed by sole appellant. He submits that if delay is not condoned, irreparable loss and injury will be caused to the applicant. He submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in preferring the Civil Application and allow the applicant to join as legal heirs of sole appellant in Second Appeal No.715 of 2008.

5 On the other hand, the learned counsel for the respondent vehemently opposed the present application. He submits that applicant has not shown sufficient cause for condonation of more than 200 days in preferring the present Civil Application. He submits that applicant has made incorrect statement in paragraph 3 of the Civil Application. He submits that applicant in paragraph 3 of the Civil Application stated that in second week of January, 2015, they contacted local lawyer and thereafter, applied for death certificate. Whereas the death certificate on page 10 Exhibit A to the Civil Application shows same was issued on 11.4.2014. This itself shows that the applicant has made incorrect statement just to obtain favourable order from this court. Hence, there is no substance in the present Civil Application and same be dismissed with costs.

6 I have heard both the sides at length. Considering the submission made by the learned counsel for the applicant and the averments made in Civil Application, I am satisfied that the applicant has made out a case for allowing the Civil Application. Hence, following order is passed:

- a) Delay in preferring Civil Application is condoned.
- b) Abatement is set aside.
- c) Applicant is permitted to carry out appropriate amendment in Second Appeal No.715 of 2008 by joining them as legal heirs of sole appellant within six weeks from today, failing which Civil Application shall stand dismissed without referring back to the court.
- d) Applicant either to pay or deposit in the Registry sum of Rs.5000/- towards cost to the respondents within four weeks from today, failing which Civil Application shall stand dismissed without referring back to the court.
- e) If amendment is carried out within stipulated time as stated hereinabove, applicant to serve amended copy of memo of Second Appeal on respondent's advocate thereafter immediately.
- f) Civil application stands disposed off accordingly.

(K.K.TATED, J.)

CERTIFICATE

Certified to be true and correct copy of the original
signed order.