

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

**CIVIL APPLICATION NO.3037 OF 2015
IN
WRIT PETITION NO.457 OF 2006**

Mr.Pandit Balkrishna Bhingarkar
(Since deceased through its legal heirs
1(a).Shri.Devidas Panditrao Bhingarkar
and Another ..Applicants
V/s.

Vasant Keshav Nagpure
(Since deceased through its legal heirs
1(a).Shri.Hemant Keshav Nagpure
and Another. .. Respondents

Mr.Sachin Chavan, i/by Mr.S.S.Kulkarni for the Applicants.
Ms.Tejashri Joshi i/by Mr.A.A. Karge for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 27th NOVEMBER, 2015.

P.C.

1. The above Civil Application has been filed for bringing the legal heirs of the sole Respondent on record and for condonation of delay of 3 years and 358 days in filing the application. The reasons for the delay are mentioned in paragraph nos.5 and 6 of the application. The sum and substance of the reasons is that the Applicants were not aware of the proceedings filed by the Petitioner as the Petitioner was

himself prosecuting the said proceeding and had not made the Applicants aware of the same. It is also the case of the Applicants that they are residing at Yeola, District Nashik which is a remote place and, therefore, they were not in contact with the local Advocate or the Advocate who has filed the above petition in this Court. It is also the case of the Applicants that they are not aware of the legal procedure of bringing the heirs on record. It is on account of the said reasons, according to the Applicants, that the said delay of 3 years and 358 days has occurred in filing of the above Civil Application.

2. On behalf of the Petitioner the learned counsel opposes the application but ultimately leaves to the Court.

3. It is required to be noted that no affidavit-in-reply has been filed on behalf of the Respondent. Insofar as the Civil Application is concerned, it is required to be borne in mind that the above petition was admitted and was pending hearing and final disposal. The petition was filed in the year 2000 and the original Respondent has expired on 19-05-2011. Since the

above petition was admitted, in my view, it would be just and proper to give an opportunity to the heirs of the Respondent to prosecute the above petition on merits rather than throwing them out on technicalities. Hence, by accepting the reasons mentioned in paragraph nos.5 and 6 of the Civil Application, the delay in filing the Civil Application is required to be condoned and is accordingly condoned. The Civil Application is allowed in terms of prayer clause 'a','b' and 'c'. The Applicants to pay costs of Rs.2,000/- to the Petitioner within four weeks from date. Amendment also to be carried out within 4 weeks from date.

4. List Writ Petition No.457 of 2006 along with Writ Petition No.81 of 1997 which is the companion petition for final hearing in the week commencing from 18th January 2016.

(R. M. SAVANT, J)