

vks

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2039 OF 2014
IN
WRIT PETITION NO.2333 OF 2011**

Vsant Dhamle .. Applicant.
V/s.
Narayan Paygude .. Respondents.

Ms. Pallavi N. Dabholkar, for the Appellant.
Mr. Siddhesh A. Pilankar i/by Mr. Uday P.
Warunjikar, for the Respondent

CORAM : K. R. SHRIRAM, J.

DATE : 28st January, 2015.

P.C.

This Civil Application is taken out for condonation of delay of 473 days in filing Civil Application. The counsel for the respondent strongly opposed the application. The sole petitioner expired on 8th January, 2013. When the matter was listed on 28th January, 2013, this Court was pleased to observe that since the petitioner has expired, the petition cannot be proceeded with and it

was dismissed as abated. At the same time, the petitioner's advocate was given liberty to take requisite steps in accordance with law. That is how, this application came to be filed.

2. In the application, it is stated that the advocate on record received the death certificate only some time in July, 2013 and soon on the receipt thereof, the application for bringing the legal heirs on record was prepared and the draft of the application was sent in August, 2013 and due to pre-occupation of the instructing advocate, the applicant was got affirmed in September, 2013 and was despatched to the present advocate on record. Copy of the said affidavit is annexed to this Civil Application. The counsel for the applicant states that it was an error in her office on the part of the clerk that the application did not got filed and was misplaced. The counsel also states that only

when the respondents filed an execution proceeding and notice was received on 30th June, 2014, the advocate realised that there was something amiss and on enquiry it is found that the application which was received by her office in September, 2013 did not got filed.

3. In view of the facts and circumstances of the case and since I am satisfied that the earlier application that remained to be filed was in fact affirmed in September, 2013, I am inclined to condone the delay. Therefore, the Civil Application is allowed in terms of prayer clause (a), (b) and (c). The Writ Petition to come up for hearing in due course.

(K. R. SHRIRAM, J.)