

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

CIVIL APPLICATION NO.642 OF 2014

IN

CIVIL REVISION APPLICATION NO.215 OF 2009

Mr. Laxman Keshav Kudalkar and others .. Applicants

Versus

Municipal Corporation of Greater Mumbai

and another

.. Respondents

Pallavi N. Dabholkar, Advocate for the Applicants.

Mr. Apte, Senior Counsel a/w Mrs. M. R. Bhoir, for Corporation.

CORAM : R.M. SAVANT, J.

DATE : 16th JANUARY, 2015

PC.

1. The above Civil Application has been filed for bringing the heirs of the original applicant on record, for condonation of delay of 3 years for setting aside the abatement. The reasons why the delay has occasioned are mentioned in paragraphs 4, 5 and 6 of the Civil Application. The sum and substance of the reasons is that after the original applicant expired, the present applicants i.e. the heirs being laymen were not aware of the procedure that was required to be followed of bringing the heirs on record. In view thereof, they did not inform the advocate on record of the death of the Applicant. It is further their case that when the advocate contacted them after the Civil Application for vacating the stay was served

upon her that they informed the advocate about the death of the original Applicant which had taken place on 24.09.2011. On the advocate informing them of the procedure that was required to be followed that the applicants applied for the death certificate and after obtaining the same have handed over the same to the advocate and filed the instant application. The above Civil application has been opposed on behalf of the Respondent No.1, the reasons mentioned have been questioned and it is the case of the Respondent No.1 that no case for condonation of delay is made out and consequently for the heirs being brought on record and for setting aside the abatement. It is required to be noted that the above Civil Revision Application has been admitted and is pending hearing and final disposal and interim reliefs are operating in favour of the Applicant, thereby the order passed against the Applicant for his eviction was stayed. Though, undoubtedly there is a delay of three years but having regard to the reasons mentioned in the application and having regard to the fact that the Applicants being not aware of the legal niceties, the reasons mentioned may be the plausible reasons for the delay having occasioned. It is well settled that a party should be given an opportunity to prosecute the proceedings on merits rather than being thrown out on technicalities. The Civil Application is therefore, required to be allowed and is accordingly allowed in terms of prayer clauses b, c and d. Amendment to

be carried out in the Civil Revision Application as well as Civil application filed by the Respondent No.1 within two weeks from date. List the Civil Application No.642 of 2013 after three weeks.

[R.M. SAVANT, J]