

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

**CIVIL APPLICATION NO. 638 OF 2016
IN
WRIT PETITION NO. 744 OF 2007**

Kachrusing S/o Santramsingh Rajput (Died),
Through L.Rs. Shantabai Babulal Pardeshi
and Others .. Applicants

Versus

The State of Maharashtra and Others .. Respondents

Shri P. S. Dighe h/f Shri V. R. Dhorde , Advocate for Applicants.
Shri V. D. Rakh, A. G. P. for Respondent Nos. 1 and 2.
Shri A. S. Bajaj, Advocate for the Respondent No. 3.

**CORAM : S. V. GANGAPURWALA AND
A. M. BADAR, JJ.
DATE : 29TH JANUARY, 2016.**

PER COURT :-

1. Leave to correct the title clause of the civil application.
2. Mr. Dighe, the learned counsel for the applicants submits that, there is delay in filing the application for bringing on record the legal heirs of deceased petitioner. At the time when the matter was listed for final hearing the instructions were called from the petitioner, at that time it transpired that the petitioner is dead. The legal heirs of the petitioner were not aware of the pendency of the present writ petition. As such, they could not inform the counsel for the petitioner nor could take steps to bring themselves on record. As such, the delay has been caused.
3. Mr. Bajaj, the learned counsel for the respondent opposes

the application and submits that, there is no plausible reason given.

4. The averments made in the application are not controverted by the non applicants by filing any affidavit. It is trite that abatement has to be strictly construed and application for setting aside abatement has to be liberally construed. After a long slumber the matter was listed for final hearing naturally during the interregnum the steps were not taken. Even otherwise, it cannot be presumed that, the legal representatives were having knowledge of the pendency of the proceedings.

5. Considering the aforesaid aspect of the matter, the civil application is allowed in terms of prayer clauses "A" and "B". Necessary amendment be carried out within 14 days.

6. The civil application is accordingly disposed of.

[A. M. BADAR, J.]

[S. V. GANGAPURWALA, J.]

sam/Jan.16