

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

**59 CIVIL APPLICATION NO. 6528 OF 2015
IN
SA/356/2000**

**DILIPKUMAR HANSRAJ JAIN
AND ORS**

VERSUS

**FATECHAND GULABCHAND JAIN
THROUGH LRS PADMABAI AND**

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Mr. C.K.Shinde, Advocate for Applicants.

Mr. H.K.Mundhe, Advocate for R 1-b,

1-e to 1-g.

Mr. P.F.Patni, Advocate for R – 2 -b.

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CORAM : T.V.NALAWADE, J.

DATE : 20th JUNE, 2016

ORAL ORDER :-

. The application is filed for setting aside the abatement in respect of both the respondents for condonation of delay and for permission to bring L.Rs. on record. Heard learned counsel for the applicant.

2. Learned counsel for the applicants submits that in the year 2008 application was filed of similar nature in respect of respondent No. 1, but it was withdrawn. Learned

counsel submits that due to mis-conception, step was taken and the counsel takes blame to himself. He is interested in working out the Second Appeal as it was admitted.

3. Death certificate is produced in respect of respondent No. 2 – Nemichand, who died on 28/08/2014 and the application was filed on 11/06/2015 i.e. after about 10 months of the death of respondent No. 2 – Nemichand. It is the case of the L.Rs. of respondent No. 2 that intimation was given in respect of death of Nemichand. Learned counsel representing L.Rs. of Nemichand submitted that Nemichand was real uncle of the plaintiff and so there was no scope for the plaintiff to say that the date was not within the knowledge. This submission need not be considered though Nemichand was resident of Mumbai and parties do not generally turn up to the Court in Second Appeal unless they are informed by the counsel. There is no record of intimation. So, the application in respect of Nemichand is allowed. Abatement is set aside. Delay is condoned. Permission granted to carry out amendment. Amendment to be carried out immediately.

4. Issue notice to respondent Nos. 1 and 2, waive by the respective counsels.

5. List the matter for final hearing on 05/07/2016 in urgent category.

[T.V.NALAWADE, J.]

