

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

***CIVIL APPLICATION NO. 209 OF 2015
IN
SECOND APPEAL NO. 698 OF 2000***

Vijay Co-op. Magaswargiya Malki
Bhadekaru Sah. Griha Nirman Sanstha. ... Applicant
v/s
Shidgonda Babu Naik & ors. ... Respondents

Mr.G.H. Keluskar for the applicant.
Mr.S.B.Deshmukh for Resp. Nos.1 to 5 and 7 to 11.

***Coram: N.M. Jamdar, J.
Dated: 29 July, 2016***

P.C.:

By this application, the Applicant seeks to bring heirs of Respondent No.11 on record and condone the delay and set aside the abatement.

2 Heard learned counsel for the parties. Reply is filed.

3 Learned counsel for the Respondents submitted that the delay in filing the application for setting aside the abatement of the second appeal is of inordinate nature and inspite of an order passed on 13 October 2011, no steps have been taken. This argument cannot be accepted. Nothing is placed on record to show that the

communication as envisaged under the Code of Civil Procedure was issued by the advocate for the Respondent No.11 informing the Applicant/Appellant of the death of Respondent No.11 as well as particulars of his heirs. In view of this failure to carry out the obligation cast, the Respondents cannot take advantage of this resultant position.

4 Second contention raised is that the statement in the application that it is filed by the Secretary of this Applicant society is incorrect as the deponent is not a Secretary. Learned counsel for the Applicant submitted that the members of the Society are not very literate and the Applicant may not be a Secretary, but he is a member of the Society. No other member has come forward to state that the Applicant has any right to represent the Applicant Society.

5 In the circumstances, it would be in the interest of justice that the the application is allowed.

6 Accordingly, the civil application is allowed in terms of prayer clauses (a), (b) and (c).

7 Amendment to be carried out within a period of three weeks from today.

(N. M. Jamdar, J.)