

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 999 OF 2012
IN
SECOND APPEAL NO. 663 OF 2002

Shamsudhar Satyanarayan Kabra & Ors. Applicants

VERSUS

**Dwarkabai alias Gangabai Narayan Malpani,
Since deceased, through legal heirs & Anr. Respondents**

Mr.Suresh Shah for the Applicants.

Mr.Ajinkya Udhane, i/b. Mr.S.B.Deshmukh for the Respondent nos. 1A to 1C.

CORAM : R.D. DHANUKA, J.

DATE : 30th SEPTEMBER, 2016

P.C.

By this civil application, the applicants seek condonation of delay of 9 years and 50 days in filing the civil application, to set aside the order of abatement of the second appeal qua respondent no.1 and for bringing legal heirs of the respondent no.1 on record. It is the case of the applicants that the respondent no.1 expired on 8th December, 2002 at her native place. The applicants are staying at Solapur and the relation between the applicants and the respondent being strained, the applicants were unaware about her death. One of the relative informed the applicants about the death of the respondent no.1 and thereafter the applicants applied for death certificate of the respondent no.1 which came to be issued on 12th March, 2012. The applicants brought this fact to the notice of their advocate who advised the applicants to bring the legal heirs of the respondent no.1 on record. In this process there was further delay of 41 days in filing the civil application.

2. Learned counsel appearing for the respondents strongly opposes this civil application on the ground that there is delay of 10 years in filing the civil application. It is not the case of the respondents that the respondents have informed the applicants about the death of the respondent no.1. In these circumstances, I am inclined to accept the explanation of the applicants in the civil application that they were not aware of the death of the respondent no.1 and came to know about the same only from one of their relatives. In these circumstances, I am inclined to condone the delay in filing the civil application and for granting other reliefs as prayed in the civil application. Civil application is accordingly made absolute in terms of prayer clauses (a) to (c). Amendment to be carried out within two weeks from today. Amended copy of the second appeal shall be served upon the respondents including the legal heirs of the respondent no.1 within two weeks from the date of carrying out amendment. No order as to costs.

[R.D. DHANUKA, J.]