

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****CIVIL APPLICATION NO. 1645 OF 2013****IN****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 4 years and 3 months in filing the application for setting aside the abatement of the second appeal as against the respondent no.2 who expired on 13th May, 2009 and for bringing the legal heirs of respondent no.2 on record.

2. It is the case of the applicants that the applicants were not aware of the death of the respondent no.2 and came to know only when the reply was filed in the Civil Application No.999 of 2012 by respondent no.1A to 1C on 15th October, 2012. It is the case of the applicants in the civil application that the applicant no.1 was admitted for surgery in the hospital and thus could not follow up the matter with the advocate and could not inform the advocate about the death of the respondent no.2.

3. The application for condonation of delay and for other reliefs is vehemently

opposed by the learned counsel for the legal heirs of the respondent no.2 on the ground that there is substantial delay in filing civil application. Though the respondent no.2 expired on 13th May, 2009, application for setting aside is filed on 25th November, 2013. It is submitted that the delay is not properly explained. It is submitted that the application has already filed application for condonation of delay and for bringing the legal heirs of respondent no.1 on record i.e. Civil Application No.999 of 2012 and were thus aware of the procedure to bring the legal heirs of the respondent no.2 on record.

4. It is not in dispute that the respondent no.2 expired on 13th May, 2009. The relations between the parties being strained and the applicants came to know about the death of the respondent no.2 for the first time when the legal heirs of the respondent no.1 filed affidavit in reply in Civil Application No.999 of 2012. The further delay in filing civil application is explained in great detail in this civil application. I am inclined to accept the explanation rendered in the civil application justifying the delay in filing civil application, for setting aside the abatement of the appeal against the respondent no.2 and for bringing his legal heirs on record and for setting aside the order passed by the learned Registrar (Judicial-II).

5. For the reasons recorded in the civil application, civil application is 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 should be served upon the respondents including the legal heirs of the respondent no.2 within two weeks from the date of carrying out amendment. No order as to costs.

[R.D. DHANUKA, J.]