

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Civil Application Nos. 313, 314, 315 & 316 all of 2016

IN
Second Appeal No.519 of 2005
[Harishchandra Basantlal Agrawal Vs. Hamid Khan Birkhan Pathan
(dead) through L.Rs.]

**Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.**

Court's or Judge's orders

Mr. P. N. Mehta, Adv., for the applicants.
Mr. Nitin Vyawahare, Adv., for respondent nos. 1-C, 1-D, 1-E, 1-G
and 1-H.

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CORAM : A. S. CHANDURKAR, J.

DATE : 19th June, 2017

By these applications, it is prayed that the legal heirs of the sole appellant be permitted to be brought on record after setting aside the abatement and condoning the delay.

In the application for condonation of delay, it has been stated that the sole appellant expired on 10th August, 2014. The legal heirs were not aware about the pendency of the proceedings as said legal heirs were separate in mess and residence and were busy in their respective businesses. It is further stated that thereafter the widow of the sole appellant had also expired. After getting knowledge of the present litigation, these applications have been moved.

The application is opposed by the contesting respondents by filing reply. It is stated that considering the period of delay, it is clear that the applicants have been negligent in prosecuting the litigation. It is further denied that the applicants did not have knowledge about the pending proceedings.

The appeal pertains to the year 2005 which was pending after its admission. The sole appellant expired on 21st December, 2012, after which his widow also expired on 10th August, 2014. Considering the ground mentioned that the applicants were separate in mess and residence and were pursuing their separate businesses, the application deserves to be allowed so as to enable adjudication of the respective rights on merits. The delay as caused can be compensated by awarding costs in favour of the respondents. Hence, subject to costs of Rs.3,000-00 [rupees three thousand only] being paid by the applicants to the non-applicants within a period of three weeks from today, the applications are allowed. After setting aside the abatement and condoning the delay, the legal heirs are permitted to be brought on record. Amendment be carried out within a period of one week from today.

Applications are disposed of.

Judge

