

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

911 CIVIL APPLICATION NO.7984 OF 2018
IN CRA/280/2011
WITH
CRA 280/2011

DEORAO BHIKAJI HIVRALE DIED THROUGH L.RS. USHA
MANOJ JADHAV (HIVRALE) AND OTHER
VERSUS
SHAIKH SALIM SHAIKH AHMED

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Advocate for Applicants : Mr. Nagarkar Avinash M

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CORAM : N.M. JAMDAR, J.

Dated : 22 December 2018

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PER COURT :-

1. This civil application is filed for condonation of delay of 169 days in setting aside the abatement of the revision. In the revision notices have been issued and served and none appears for the respondent even though served. The revision arises from order passed by the learned Civil Judge rejecting the application for rejection of the plaint filed by the petitioner-defendant.

2. The learned counsel for the applicant submits that, due to lack of communication, heirs could not be brought on record in the revision as well as in the suit. He states that, since the impugned order

in the revision arises only from rejection of the plaint on the ground of holding that the cause of action is made out in the plaint, the argument of the applicants on merits be kept open. Since the scope of deciding the application under Order 7 Rule 11 on the ground of lack of cause of action is limited to ascertainment of pleadings in the plaint and not on the chance of success of the parties, it is obvious that the petitioner's case on merits will have to be considered at the time of hearing of the suit. Therefore, the petitioners are at liberty to put forth their defence as may be available to the petitioners at the time of hearing of the suit. In these circumstances, civil application is allowed. Civil Revision Application stands restored to file and is disposed of in above terms. The petitioners will carry out the necessary amendment in the suit, if it has not already been carried out.

(N.M. Jamdar, J.)

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