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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 9126 OF 2016
IN
APPEAL FROM ORDER NO.120 OF 2015

Trivenibai w/o Sopan Dhaigude and Others

APPLICANTS

VERSUS

Baburao s/o Subhana Dhaigude and Others

RESPONDENTS

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Mr. V. S. Bedre, Advocate for the applicants

Mr. H. D. Deshmukh, Advocate for respondent No.1a to 1e

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 21st FEBRUARY, 2018

ORDER :

1. This civil application has been filed seeking condonation of delay caused in bringing respondents No.1a to 1e as legal heirs of deceased respondent No.1, as referred to in paragraph No. 5, on record of appeal from order, stating that notice of application for interim relief had been returned unserved with a remark that respondent No.1 is no more and thereafter some time had been consumed in receiving communication about such endorsement being there by their advocate along with direction to have death certificate of respondent No.1. Respondent No.1 being resident of Chinchkhadi in Ambajogai Taluka and applicants had been

from Latur district, some time had been consumed in obtaining the death certificate. After getting death certificate, since it was agricultural season, they could not make it to high court within stipulated period and as such, delay is accounted for.

2. Learned advocate for the respondents stiffly resists the application stating that as a matter of fact, the appeal sought to be preferred against the decree in favour of respondent No.1 had been untenable, having been preferred against dead person. He further submits that the applicants are intent on procrastination of litigation to defraud the decree passed in favour of the plaintiff. He submits that if the application is allowed it may hamper and delay execution of decree.

3. Though learned advocate for the respondents has resisted the application, he is not in a position to challenge the veracity of factual position that notice of interim relief application has been received back with an endorsement of respondent No.1 being no more. Albeit, he contends that the applicants are supposed to be aware of the death being from brotherhood, yet some due will have to be given to that the applicants, as stated in the application, have realized about making application for bringing legal heirs of respondent No.1 on record only after

endorsement in the report and consequent advise by the advocate.

4. As such, in larger interest of the parties, the application is allowed. Delay is condoned. Respondents No.1a to 1e be brought on record of the appeal from order as legal heirs of deceased respondent No.1.

5. Application, as such, is disposed of.

[SUNIL P. DESHMUKH, J.]