

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

WRIT PETITION NO. 9319 OF 2017

LAXMAN NARAYANRAO KHEDKAR
VERSUS
DNYANESHWAR PANDURANG KHEDKAR AND OTHERS

...

Advocate for the Petitioner : Shri Naikwade Shivaji K.

Advocate for Respondent 1 : Shri A.A.Khande.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd June, 2018

Per Court:

1 The Petitioner is aggrieved by the order dated 31.03.2017 below Exhibits 58, 59, 60 and 66 in Regular Civil Appeal No.110/2009 by which, the Appellate Court has rejected those applications for condonation of delay caused in bringing the legal heirs of the deceased Respondent No.3 on record and for setting aside the abatement order.

2 The Petitioner prays for leave to delete Respondent No.2 and Respondent No.3/5. Deletion is permitted at the risk of the Petitioner.

3 Shri Khande appears for Respondent No.1/original Plaintiff. The other Respondents are served and have not chosen to enter an appearance.

4 I have considered the strenuous submissions of the learned

Advocates.

5 The Petitioner is the original Appellant in RCA No.110/2009. He submits that as the appeal is a continuation of the suit and which has been decreed in favour of the Plaintiff, the issue of bringing the legal heirs of the deceased Respondent No.3, who was the original Defendant No.4, would arise when an order is to be passed by the Appellate Court and even for balancing the equities, these legal heirs would be necessary.

6 The learned Advocate for the original Plaintiff consents for final disposal of this writ petition, for the reason that he could have brought the legal heirs of Defendant No.4 on record, but did not do so on account of inadvertence.

7 Considering the above, this Writ Petition is allowed and the impugned 31.03.2017 is set aside by the consent of the parties. The application Exhibits 58, 59, 60 and 66 are allowed. The Petitioner/Appellant shall act in furtherance of this order within four weeks and complete the formalities to bring the legal heirs of the deceased Defendant No.4 on record.

8 Since the appeal is of 2009, the Appellate Court is directed to decide RCA No.110/2009 as expeditiously as possible and preferably on or before 28.02.2019.