

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

938 CIVIL APPLICATION NO. 8930 OF 2018
IN
SECOND APPEAL NO. 204 OF 2016

MALTIBAI NIVRUTTI KALE L.R. JAYANT AND ANOTHER
VERSUS
OMPRAKASH SITARAM AGRAWAL AND OTHERS

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Advocate for Applicants : Mr. Girish S. Rane
Advocate for Respondent Nos. 1 and 3 : Mr. A.S. Bajaj
Advocate for Respondent No.9. : Mr. V.P. Patil

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CORAM : V.L. ACHLIYA, J.
DATED : 07th SEPTEMBER, 2018

PER COURT:-

1. The applicants-appellants have taken out this application for setting aside the order of abatement and to bring the L.Rs. of deceased respondent no.5 on record with condonation of delay for the reasons set out in detail in the application.
2. The notice was issued to respondent no.5A i.e. legal heir of deceased respondent no.5. In spite of service, the respondent no.5A is absent.
3. Considering the over all facts of the case and the submissions advanced that the cause survives to proceed against the legal heir of respondent no.5, I am of the view that application deserves to be allowed. Accordingly, the application is allowed in terms of prayer clauses 'A', 'B', 'C' and 'D'.

4. Necessary substitution be carried out within two weeks.
5. The civil application stands disposed of in above terms.
6. After carrying out the substitution, the notice be issued to respondent no.5A in Second Appeal, returnable on 30.10.2018.
7. List the Second Appeal on 30.10.2018.

(V.L. ACHLIYA)
JUDGE

SPR