

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 1753 OF 2016
IN
SECOND APPEAL NO. 538 OF 1992
WITH
CIVIL APPLICATION NO. 1754 OF 2016
IN
SECOND APPEAL NO. 538 OF 1992
WITH
CIVIL APPLICATION NO. 1755 OF 2016
IN
SECOND APPEAL NO. 538 OF 1992
WITH
CIVIL APPLICATION NO. 1756 OF 2016
IN
SECOND APPEAL NO. 538 OF 1992**

Shri Mahadev Anna Mahadik
(deceased Thr. Lrs) And Ors.

...Applicants

Versus

Smt. Kamalabai W/o. Vithal Bichitkar
And Others

...Respondents

Ms.Gitanjali Koli i/b Mr.Vijay Killedar for the Applicants.

Mr.Pandit Kasar for Respondent No.2.

CORAM : M. S. SONAK, J.

DATE : 21st FEBRUARY 2018

P.C.

1. The Civil Application No.1753 of 2016 is for setting aside abatement which has set in on account of the demise of respondent No.4 and failure to bring on record the legal

representatives of respondent No.4. The Civil Application No.1754 of 2016 seeks to bring on record the legal representatives of respondent No.4. In these Civil Applications there is prayer for condonation of delay of about 8 years.

2. The Civil Application No.1755 of 2016 seeks again to set aside abatement to bring on record legal representatives of deceased respondent No.6A after seeking condonation of delay of over 6 years.

3. The Civil Application No.1756 of 2016 seeks to bring on record the legal representatives of Appellant No.2 again after seeking condonation of delay of over 10 years.

4. The learned counsel for the respondents oppose grant of any relief in all these Civil Applications. He points out that there are hardly any cause shown in the application for condonation of delay. They pointed out that appeal is itself is of the year 1992 and on account of the inaction on the part of the appellants, there is no further progress in this appeal which, by now, should have been disposed of.

5. The learned counsel for the applicant however, points out that after the appeal was admitted, the appellants, who are from the interiors of Maharashtra where not really aware of the legal procedures and therefore, did not report the factum of death. She submits that the delay cause, is not for any malafide reasons or even due to any intentions. She submits that applicants has really gained nothing by not taking any steps within prescribed period of limitation. She submits that the issue of delay should be construed liberally and procedural aspects may not come in the way of substantial justice.

6. Upon due consideration of the rival submissions, in the peculiar facts and circumstances of the present case, the applications, deserves to be allowed though, by requiring the applicants, to pay cost. The explanation for delay can be held as sufficient particularly accepting the submissions made by the learned counsel for the applicant. Although, the applicants may have been aware of the demise of the parties to the litigation, it is possible that they were unaware of the requirement of taking steps to bring legal representatives on record within prescribed period of limitation. There are no malafides and merely because there is some unintentional lapse, there is no reason to deny the applicants

hearing in their appeal on merits.

7. All these Civil Application's are therefore allowed subject however, to the applicants paying to the respondents or depositing in this Court consolidated costs of Rs.10,000/- within a period of four weeks from today. Upon deposit of costs, the respondent shall be entitled to withdraw the same unconditionally.

8. If the amount of costs shall not deposited within four weeks from today, these Civil Applications shall be deemed to have been dismissed without further any reference to this Court.

9. If the amount of costs are deposited, place the Second Appeal on the Board for final disposal in the week commencing from 19th March 2018.

(M. S. SONAK, J.)