

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

WRIT PETITION NO. 8565 OF 2015

Mr. Suhas Yeshwant Datye & Anr. ...Petitioners

Versus

Smt.Najma Allauddin Bagwan & Anr. ...Respondents

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Mr.Sanskar Marathe for the Petitioners.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: JULY 24, 2018**

P.C. :

1. Though served, none appears for the respondents.
2. Rule. Rule made returnable forthwith. The petition is heard finally and disposed of at the stage of admission.
3. This Petition is directed against the order dated 10th July, 2015 passed by the learned 7th Jt. Civil Judge, Senior Division, Pune thereby rejecting the application below exhibit 16 in Special Civil Suit No. 1937 of 2011.

4. The petitioners, who are the original plaintiffs, have moved an application for amendment in the plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908.

5. It is submitted by the learned Counsel for the petitioners that original defendant No.1 i.e., respondent No.1 is a mother of defendant No.2 i.e., respondent No.2. Defendant No.1 expired on 6th May, 2013 and the suit is continued against defendant No.2. However, the plaintiffs had no knowledge that defendant No.1 has three married daughters and they being the legal heirs are also to be brought on record. He further submits that inadvertently the prayer of condonation of delay remained to be made and, therefore, he seeks permission to be mentioned in the Petition.

6. Considered submissions. However, the plaintiffs were not aware of the legal heirs i.e., three married daughters of the deceased defendant No.1 and their addresses and hence, there is a delay.

7. Perused impugned order. The learned Judge of the trial Court in fact has taken correct view in paragraph 5 of the impugned order wherein he has mentioned that the suit cannot be

abated against defendant No.2. He has also mentioned that the plaintiffs have not moved an application for bringing other legal representatives on record within the stipulated time. Neither the plaintiffs have moved an application for condonation of delay nor setting aside abatement against those legal representatives. Hence, the learned Judge of the trial Court has rejected the application.

8. The suit is of 2011. The learned Counsel for the petitioners has mentioned that the application for condonation of delay has remained to be filed. This Court condoned the delay. In view of this, I direct the petitioners/ plaintiffs to move afresh application for bringing on record the legal heirs of defendant No.1 as proposed defendants. However, the said application is to be made before the trial Court after giving notices to the proposed defendants within a period of two weeks from today.

9. In view of the above, Writ Petition is disposed of.

(MRIDULA BHATKAR, J.)