

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**CIVIL APPLICATION No. 1790 OF 2017
WITH
CIVIL APPLICATION No. 1792 OF 2017
WITH
CIVIL APPLICATION No. 1793 OF 2017
IN
SECOND APPEAL No. 565 OF 2002**

Balkrishna Pralhad Shinde & Ors.

...Applicants

Versus

Vithalrao Apparao Patil (Deceased)

...Respondent

.....

Mr. Ketan Joshi a/w. Mr. Vishwajeet V. Mohite i/b. Ergo Juris for the Applicants in all Applications.

Ms. A.R.S. Baxi for the Respondent.

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CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **MARCH 28, 2018**

P.C.:

1. The learned Counsel for the applicants submits that he has filed Civil Application Nos. 1790 of 2017, 1792 of 2017 and 1793 of 2017 for bringing on record the legal heirs of the deceased sole Respondent -Vithalrao Apparao Patil. The sole respondent expired on 2nd December, 2014. The Second Appeal was admitted on 5th April, 2006 and was pending for final hearing. He further submits that after the death of the sole Respondent-Vithalrao Patil, the

applicants could not file the application for bringing on record the legal heirs within time. He further submits that there was delay of 550 days in filing the application for setting aside the order of abatement, which was passed by Registrar (Judicial-II). In between, the wife- Smt. Vimal Vithalrao Patil and two sons - Dilip Vithalrao Patil and Apparao Vithalrao Patil of the deceased sole respondent were died and, therefore, in Civil Application No. 1787 of 2017, the present applicants have made combined prayers for setting aside the order of abatement and condoning the delay so also for bringing the legal heir i.e., wife of the deceased sole respondent on record. When the application was filed, the grandchildren of the deceased sole respondent- Vithalrao Apparao Patil were existing legal heirs. He further submits that by order dated 12th March 2018, this Court has allowed the Civil Application No. 1787 of 2017. Pursuant to the said order, the legal heirs i.e., grandchildren of the deceased sole respondent were brought on record. He further submits that Civil Application Nos. 1790 of 2017, 1792 of 2017 and 1793 of 2017, which are preferred for bringing on record the legal heirs of the sole respondent have in fact are to be withdrawn or to be disposed of.

2. The learned Counsel for the respondent submits that the

appellants were informed about the death of the sole respondent in the year 2014. However, they did not take any action for bringing the legal heirs on record within time. She opposes these Applications on the ground that the legal heirs i.e., the wife and two children of the deceased sole respondent should have been brought first on record and thereafter, the application for bringing on record their legal heirs should have been made.

3. Heard submissions. There is delay in filing the application for bringing on record the legal heirs and for setting aside the order of abatement on account of the death of the sole respondent. However, the said delay is condoned and also the order of abatement is set aside by this Court on 12th March, 2018. On perusal of Civil Application No. 1787 of 2018, it is found that there was combined prayers of bringing legal heirs on record of the sole respondent. Considered the facts of the case that the wife and two children of the deceased sole respondent were expired when Civil Application No. 1787 of 2017 was preferred. Therefore, the legal representatives i.e., grandchildren of the sole respondent were surviving as legal heirs of the deceased sole respondent- Vithalrao Patil. Pursuant to the order dated 12th March 2018, they are already brought on record.

Under such circumstances, these Civil Applications do not survive and the same are accordingly disposed of with costs of Rs. 1000/- in each Civil Application. As the Civil Application No. 1787 of 2017 is allowed, it is clarified that the Second Appeal along with Civil Application and the orders passed therein are restored to their original file.

(MRIDULA BHATKAR, J.)