

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

**946 CIVIL APPLICATION NO.1947 OF 2015
IN SA/744/2008**

**SHRIRAM MADHAV MORE AND OTHERS
VERSUS
ABDUL KHALID ABDUL SAMAD PATEL DIED LRS ABDUL SAMAD
AND OTHERS**

...

Advocate for Applicants : Mr. P.G. Tawbade h/f Mr. B.R. Kedar
Advocate for Respondents No.2A to 2E : Mr. B.M. Dhanure

...

CORAM : V.L. ACHLIYA, J.

DATED : 29th NOVEMBER, 2019

PER COURT:-

. The present application is filed to set aside the order of abatement and to bring L.Rs. of deceased respondent no.3 with condonation of 107 days delay in filing application.

2. Heard the learned counsel for the applicants – appellants and learned counsel for respondent nos.2A to 2E is present. Respondent nos.3A to 3G i.e. legal heirs of respondent no.3 though serve, are absent.

3. On due consideration of the submissions advanced in the light of facts pleaded in the application and cause survives to prosecute appeal against the L.Rs. Of deceased respondent no.3, I am of the view the application deserves to be allowed. In fact,

the deceased respondent no.3 died prior to decision in appeal. Without bringing the L.Rs. of deceased respondent no.3, the appellate court has proceeding with the appeal. The appellants had no knowledge as to death of deceased respondent. When this Court issue notice of appeal it came to the notice that the respondent no.3 died prior to decision in appeal. After making enquiry and obtaining copy of death certificate of deceased respondent no.3, from the office of Municipal Council Aursa, the applicants – appellants have filed this application. In the process of collecting infomration, the delay has been ocured in filing the application.

4. Considering the cause assigned, I am of the view that the application deserves to be allowed in terms of prayer clauses 'B' and 'C'. Accordingly the application is allowed. Necessary amendment/substitution be carried out within two weeks from the date of this order.

7. Civil application is disposed of in above terms.

(V.L. ACHLIYA)
JUDGE