

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

**1024 CIVIL APPLICATION NO.10653 OF 2018
IN FA/986/2006 WITH CA/3212/2019 IN FA/986/2006**

SAYYAD AHMED HUSSAIN S/O AI
HUSAIN (DEAD) THR LRS
SYED ABBAS HUSSAIN AND ORS .. Applicants
VERSUS
THE STATE OF MAHARASHTRA AD ORS .. Respondents

...
Advocate for Applicants : Shri S.G. Chapalgaonkar
AGP for Respondent – State : Shri S.J. Salgare
...

CORAM : P.R. BORA, J.
Dated: February 27, 2019

PER COURT :-

1. Heard Shri S.G. Chapalgaonkar, learned Counsel appearing for the applicants and Shri Salgare, learned AGP appearing for the respondent – State.

2. The learned Counsel for the applicants submitted that, initially the appeal was dismissed in default for want of filing on record the copies of the statements of evidence by the present applicants. It is further brought to my notice that, the said order was got set aside by the applicants on an undertaking

that, the copies of the evidence would be placed on record within a particular period. The learned Counsel further submitted that, however, since by that time the original record was sent back to the trial Court, the copies of the evidence could not be prepared and again the matter came to be dismissed vide the order passed by the Registrar on 28.06.2014. The learned Counsel further submitted that, now all such copies are prepared and they are filed along with the civil application. The learned Counsel further submitted that, in the meanwhile, the appellant expired and as such, his legal heirs also need to be brought on record. Thus, present two applications are filed, one for restoration of the appeal and another for taking on record the legal heirs of the deceased appellant.

3. Learned AGP Shri Salgare has submitted for passing appropriate orders.

4. Considering the reasons as are stated in the applications, I am inclined to allow both these applications. Hence, the following order.

ORDER

(i) The delay caused in filing the application is condoned. Order passed by this Court in Civil Application No.4406 of 2014 on 08.05.2014 is recalled and consequential order of dismissal of First Appeal No.986 of 2006 passed by learned Registrar is set aside. First Appeal No.986 of 2006 is restored to its original file. Civil Application No.3212 of 2019 stands disposed of.

(ii) The legal heirs of deceased appellant be taken on record. Necessary amendment be carried out within a week. Civil Application No.10653 of 2018 stands disposed of.

(iii) List the present appeal along with First Appeal No.1536 of 2015 for further consideration on 28.03.2019.

(**P.R. BORA, J.**)