

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 3915 OF 2018
IN SA 513/2014

Hema Govardhan Shinde & Ors.

...Applicants

Versus

Govardhan Hanmantrao Shinde & Ors.

...Respondents

.....

Mr. M. S. Shaikh, Advocate holding for Mr. Sachin
Deshmukh, Advocate for Respondents No. 2 to 5.

Mr. B. R. Kedar, Advocate for Respondents No. 6, 8 to 10.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 25-02-2019.

ORAL ORDER :

01. Present application has been filed for bringing the legal representatives of deceased respondent No. 6 on record and also for condoning the delay caused in filing this application.

02. It has been contended that the appellants came to know about death of respondent No. 6 only when the notice was returned with remark that he expired on 25.5.2014. It is stated that the applicants are minors and their guardian mother, who is illiterate, was not aware about death of respondent No. 6. The delay of 1292

days has been caused due to aforesaid reasons and it was unintentional. Hence, they have prayed for condonation of delay as well as bringing the legal representatives on record.

03. The application has been objected by the other respondents. The legal representatives of respondent No. 6 though served failed to appear. The objection is on the point that the delay of each and every day has not been properly explained.

04. It is to be noted here that when the second appeal was filed, it was alongwith Civil Application No. 9720 of 2014 for injunction. It appears that the notices of that application were issued to the respondents and respondent No. 6 appeared through Advocate. That application was contested and then it was rejected by this Court on 5.1.2015. On the same day, the matter was heard and the second appeal was admitted by framing substantial question of law. It appears that the notice after admission was issued and the notice to respondent No. 6 returned unserved with remark that he has expired. When respondent No. 6 was represented by Advocate, the Advocate ought to have informed the fact of death of respondent No. 6. But, it appears that, that compliance has not been made. Under such circumstance, the appellants are

justified in saying that they had no knowledge about the death of respondent No. 6 and only after the notice was returned with the remark that respondent No. 6 is dead, they moved the application. Under such circumstance, good and reasonable ground has been shown for condoning the delay. The application is therefore allowed. The delay is condoned. Legal representatives of respondent No. 6 be brought on record. The necessary amendment be carried out within 14 days from today. After those respondents are added again issue notice to them to give one more chance to them, if they want to contest the matter. The notice is made returnable after 6 weeks after the amendment.

[SMT. VIBHA KANKANWADI]

JUDGE

Dahibhate/-