

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

Civil Application No. 04067 of 2019
(In Second Appeal No. 0410 of 2015)

District : Osmanabad

Dagadu Eknath Kamble
(Died) through L.Rs.,
Vishnu Dagadu Kamble
& others.

.. Applicants.

versus

Dnyanoba Babu Kamble
(Died) through L.Rs.,
Anusaya w/o. Dnyanoba Kamble
(Died)
& others.

.. Respondents

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Mr. V.S. Undre, Advocate, for the applicants.

*Mrs. M.A. Kulkarni, Advocate, for respondents
no.1B to 1F, 2A, 2B, 2D, 2E, 2F, 2G and 3E.*

*Application dismissed as against respondents
no.3E, 5A to 5F as per Court's order dated
27-11-2015.*

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 19TH MARCH 2019

ORAL ORDER :

01. Present application has been filed for condoning delay of 164 days caused in carrying out amendment which was allowed to bring the legal

representatives of respondents no.1A and 06.

02. Applicants say that second appeal was on board on 07-09-2018 and it was noticed by the applicants that legal heirs were not brought on record as per order dated 17-02-2017. It is stated that the applicants were under wrong impression that in order dated 17-02-2017, some specific period was granted. Therefore, applicants suo motu made submission that the applicants will file delay condonation application for causing the amendment as per order dated 17-02-2017. Thereafter, on the last date of hearing, learned Advocate for the applicants was at Bombay and an alternate arrangement was made. Accordingly, learned Advocate, who was holding, made a submission that the learned Advocate on record has filed a leave note on 15-02-2019. Since the legal heirs were not added in the second appeal and in spite of getting the matter circulated, learned Advocate for the appellants was absent, the Court did not accept the leave note. Under such circumstance, the amendment remained to be carried out. It is stated that due to the inadvertence of the learned Advocate for the appellants, the amendment remained to be carried out. By this application, the appellants - applicants want delay to be condoned and permission to carry out the amendment.

03. Heard both sides.

04. It is to be noted that the order bringing the legal representatives of respondents no.1A and 06 was passed on 17-02-2017 itself and since then till today, there was no attempt on the part of the applicants to carry out that amendment. The delay is not properly explained. However, since learned Advocate for the applicants is blaming himself, the delay is condoned. However, taking into consideration the duration for which the amendment was not carried out, the applicants should compensate the respondents.

05. Hence, the civil application is **allowed** subject to deposit of costs of Rs. 1,000/- [Rupees one thousand], to be deposited by the applicants within 15 (fifteen) days from the date of this order, in this Court. After the amount is deposited, the applicants are allowed to carry out the amendment in the title of the second appeal. That act to be completed within 15 (fifteen) days after the deposit of the amount. The deposited amount be disbursed to legal representatives of deceased respondent no.02.

06. Place Second Appeal No. 410 of 2015 for consideration in the week commencing from 22nd April 2019.

(Smt. Vibha Kankanwadi)
JUDGE

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