

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

928 CIVIL APPLICATION NO.5213 OF 2019
IN SECOND APPEAL NO.24 OF 2010

GYANU GANGARAM NARWADE
THROUGH L.RS.DROPADABAI GYANUNARWADE & OTHERS
VERSUS
GANGABAI TUKARAM NARWADE
DIED THROUGH LRS TUKARAM GANGARAM NARWADE &
OTHERS

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Advocate for Applicants : Mrs.Ranjana D.Reddy
Advocate for Respondents :
Mr.P.R.Katneshwarkar.

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CORAM : V.L.ACHLIYA, J.
DATE : 13.09.2019

PER COURT:

1] This Application is taken out for setting aside the Registrar's order dated 09.01.2019, dismissing the appeal in default, to take steps to bring the legal heirs of deceased respondent on record with consequential relief to set aside the order of abatement and to allow the applicants to bring the legal heirs of deceased respondent on record by condoning the delay.

2] In brief, it is the contention of the learned counsel for the applicants that appeal was admitted in the year 2011. Since thereafter appeal was not on board. In the year 2016, learned counsel for the respondents circulated the matter without notice to the applicants/appellants and intimated the Court regarding death of deceased respondent. On furnishing information about legal heirs of the respondent, the applicants / appellants have moved this application. By Registrar's order dated 09.01.2019, the Appeal was dismissed as abated.

3] It is submitted that the necessary steps to bring the legal heirs of deceased respondent could not be taken as appeal was not on board and the applicants – appellants were not aware about the steps to be taken so also due to illness in the family of the applicants–appellants.

4] Learned counsel for the respondents i.e. the legal heirs of deceased respondent opposed the application with contention that no sufficient cause is shown for condoning

the delay. It is submitted that way back in the year 2016, the fact about death of deceased respondent was reported and the applicants-appellants have failed to take steps within stipulated period. In that view, no interference is called.

5] Having regard to the over all facts of the case and submissions advanced, I am of the view that the application deserves to be allowed. It appears that appeal was admitted in the year 2011 and since then appeal was not on board. It appears from the record that learned advocate for the respondents circulated the matter without intimation to the applicants-appellants and reported the fact regarding death of the respondent. In the order dated 1st April, 2016 the Court had taken note of this fact in the proceedings. Learned Advocate had undertaken to inform the advocate representing the appellants accordingly. In the mean while, the matter was placed before the Registrar's Court on 09.01.2019 and the order of dismissal of appeal in default to take steps came to be passed.

6] In view of over all facts of the case, the application deserves to be allowed. Accordingly, the application is allowed in terms of prayer clauses 'B' and 'C'.

7] In view of setting aside the Registrar's order, the order of abatement is set aside. Necessary substitution / amendment be carried out within two weeks from the date of this order.

[V.L.ACHLIYA]
JUDGE

DDC