

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

925 CIVIL APPLICATION NO.6088 OF 2016
IN SA/76/2013

RAMRATAN BUDHAI VISHWAKARMA, DIED THR. L.RS. SHIVKUMAR
AND ORS
VERSUS

DAMU KAMA PATIL DIED LRS CHAMELABAI AND ORS

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Advocate for Applicants : Mr. Kulkarni Mukul S. And A N Sabnis
Advocate for Respondents No.1A to 1C: Mr. S. B. Yawalkar

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 01-03-2019.

PER COURT :

1. Present application has been filed for bringing the legal representatives of the respondent on record, however there is delay of 1019 days. It has been contended that, the applicant came to know about death of respondent only after the report was given by the bailiff and he took some time to collect death certificate and the information regarding legal heirs. It is stated that, delay is not deliberate.
2. Say has been filed objecting the application. It is stated that, respondent died on 26-05-2013. In fact the news of death of respondent i.e. the father of the deponent giving affidavit-in-reply was published in daily Divya Marathi, Bhusawal Edition, and therefore, it is stated that the applicant was having knowledge about death of the respondent, delay is not explained properly.
3. Heard both sides. Both the learned advocates have made submission in support of their respective contentions.

4. Present applicants are the original plaintiffs, they had filed Regular Civil Suit No.425 of 1986 for possession, mandatory injunction and damages. The said suit was dismissed on 19-10-2006. Thereafter they had preferred Regular Civil Appeal No. 285 of 2006. It was heard by learned District Judge-1, Jalgaon. The appeal was dismissed on 19-03-2012. They want to challenge the said Judgment and decree in this second appeal. It appears that, the second appeal was presented on 18-07-2012 but then appears to have been numbered in 2013. Thereafter, till 04th June, 2016 it was got circulation and but no order were passed. Order of issuing notice to respondent was passed on 04th January 2016 and when the notice was issued to the respondent it was returned unserved on the ground that, respondent has expired. Thereafter, the present application was filed. Under such circumstance there is substance in the say of the applicants that, till the bailiff report the applicants had no knowledge about death of respondent. Though it is stated that, the news of death of respondent was published in the newspaper that does not *ipso facto* prove the fact that applicants had knowledge about his death. Reasonable ground is shown to condone the delay, hence the application is hereby allowed. Delay is hereby condoned. The legal representatives of respondent No.1 be brought on record. Necessary amendments be carried out within 14 days from the date of this order. Thereafter, place the matter for admission on 27-03-2019. Call for record and proceedings. Application is disposed of accordingly.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.