

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

WRIT PETITION NO. 8320 OF 2018

Mangal Ashok Karale

..PETITIONER

VERSUS

Madhukar Fakira Karale
(Died) Through legal heris
Vijay Madhukar Karale and Others

..RESPONDENTS

....

Mr. M.R. Sonwane, Advocate for petitioner

Mr. D.R. Markad, Advocate for respondent nos. 1A to 1D

....

**CORAM : R.G. AVACHAT, J.
DATED : 26th AUGUST, 2019**

PER COURT :

Heard.

2. The challenge in this writ petition is to order dated 10th November, 2017 passed by learned 2nd Joint Civil Judge, Senior Division, Ahmednagar rejecting the application (Exh.45) in Special Civil Suit No. 167 of 2015. Application (Exh.45) was moved by present petitioner (original plaintiff) to bring on record legal representatives of deceased Defendant No.1 in Special Civil Suit No. 167 of 2015.

3. The Court rejected the application mainly on the ground that date of death of deceased Defendant No.1 was not mentioned in the application.

The suit already stood abated against deceased Defendant No.1. Application was not moved for condonation of delay to bring on record the legal representatives of deceased Defendant No.1. It needs no mention that matter has to be decided on merits.

4. Though learned 2nd Joint Civil Judge Senior Division might have been justified in rejecting the application in the facts and circumstances of the case, petitioner now comes around to submit that appropriate applications would be made to bring on record legal representatives of deceased Defendant No.1, in the suit.

5. Learned Counsel for respondent urged for imposing cost. The record indicates that Defendant No.1 passed away on 11th November, 2016. Application (Exh.45) was moved on 15th March, 2017. Date of death of Defendant No.1 was not mentioned in the application. There was delay to move an application to bring on record the legal representatives. Application was not accompanied by another application for condonation of delay.

6. In the case of *Mithailal Dalsanagar Singh and Ors. Vs. Annabai Devram Kini and Ors., 2002 (3) Mh.L.J. 507*, the Apex Court has observed that prayer for setting aside abatement has to be considered liberally. Prayer for bringing legal representatives on record without specifically praying for

setting aside abatement can be construed as a prayer for setting aside the abatement.

7. In view of the above, petition is allowed with direction to petitioner to move necessary applications so as to bring on record legal representatives of deceased Defendant No.1.

(R.G. AVACHAT, J.)

SSD