

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

Civil Application No. 13693 of 2017
(In Second Appeal No. 0751 of 2010)

District : Ahmednagar

Jagannath s/o. Soma Gaikwad,
Died through L.Rs.,
Nanasaheb s/o. Jagannath Gaikwad
& others.

.. Applicants.

versus

Laxmibai w/o. Dharma Pote,
Died through L.Rs.,
Baburao s/o. Dharma Pote
& others.

.. Respondents.

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*Ms. Pratibha B. Khanderao, Advocate, holding for
Mr. Vinod P. Patil, Advocate, for the applicants.*

*Mr. Pramod S. Gaikwad, Advocate, for respondents
no.1A, 1B-A to 1B-E, 1C and 1-D-A to 1-D-D.*

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 15TH FEBRUARY 2019

ORAL ORDER :

01. Learned Advocate Mr. P.S. Gaikwad submits that he is already appearing for legal representatives of respondents nos.1B and 1D. In order dated 01-02-2019, there is mistake and, therefore, office has put the note, that Vakalatnama on behalf of legal representatives of respondents

no.1B and 1D is not yet filed. Taking into consideration that those respondents are already appearing through learned Advocate Mr. P.S. Gaikwad, there is no necessity for filing any Vakalatnama.

02. Heard learned Advocate appearing for the applicants. So also, heard learned Advocate appearing for the respondents.

03. Present application has been filed for getting the delay of 3925 days condoned in bringing the legal representatives of respondent no.1B and delay of 3424 days in bringing legal representatives of respondent no.1D on record. The applicants are also seeking permission to bring legal representatives of respondents no.1B and 1D on record.

04. It has been submitted that the delay has been caused because of the impression by the applicants, that the Advocate for the respondent is appearing for all the respondents who are residing together. In fact, the appeal was dismissed for non-removal of office objections and thereafter, after filing civil application, second appeal was restored. When notices were issued after admission, it was found that certain respondents have expired. Thereafter, time was consumed for collecting the legal heir certificate from authorities as well as

due to the illiteracy of the applicants, the delay has been caused which is unintentional.

05. The application has been strongly objected by the respondents, stating that there is huge and inordinate delay which has not been explained at all.

06. Both the learned Advocates have made submissions in support of their respective contentions.

07. It appears that the second appeal was filed in the year 2010. However, it is stated that it was thereafter dismissed due to non-compliance of the office objections. It appears that the second appeal was restored in 2014 and after record and proceedings was received, the second appeal was admitted on 13th October 2015. It appears that these two respondents i.e. respondents no.1B and 1D were appellants before the first appellate Court. The first appeal was decided on 09-07-2010. That means, their legal representatives were not brought on record when the first appeal was pending before the first appellate Court. Under such circumstance, this is a good ground to condone the delay in filing application for bringing legal representatives of respondents no.1B and 1D on record.

08. Hence, the following order.

- (a) The civil application is allowed.
- (b) Delay is condoned.
- (c) Legal representatives of respondents no.1B and 1D are permitted to be brought on record. Necessary amendment be carried out within 14 days.

(Smt. Vibha Kankanwadi)
JUDGE

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