

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

**1053 CIVIL APPLICATION NO.7897 OF 2019
IN SA/824/2016**

**EKNATH ANANDA BONDE DIED TRH. LRS. SHANTABAI EKNATH
BONDE AND OTHERS
VERSUS
RAGHUNATH ANANDA BONDE**

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Advocate for Applicants : Mr. Bhapkar S.B.
Advocate for Respondent : Mr. K.S. & V.K. sadawarte, M.S. Sapkale
& Rahul Awsarmol

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 2nd AUGUST, 2019.

ORDER :

. Present application has been filed for getting the delay of 608 days condoned in bringing the legal representatives of sole appellant on record.

2. The original appellant was the defendant before the learned trial Court in R.C.S. No.32 of 2002 which was before learned Civil Judge, Junior Division, Bhusawal. The said suit was for partition and separate possession. It came to be decreed. Then the original defendant preferred Regular Civil Appeal No.332 of 2014 before the learned District Judge-1, Bhusawal. By judgment and decree dated 16.09.2016, said appeal came to be dismissed

and therefore, the defendant filed the Second Appeal. It appears that for the first time on 27.03.2019, statement was made on behalf of appellant that the advocate has come to know that the appellant has expired and therefore, want to take steps.

3. In this application, it is stated that the deceased appellant had expired on 03.08.2017 i.e. during the pendency of the Second Appeal. It is stated that the applicants are the old age persons, residing in remote area. Applicant Nos.1 and 3 to 6 are illiterate women and were not aware about the legal proceeding. Only applicant No.2 is the Karta of the family who was engaged in agricultural work and therefore, could not communicate the fact of death of his father to the Advocate. It is stated that the delay is unintentional and on this ground, it is prayed that the delay of 608 days be condoned.

4. The application has been strongly opposed on behalf of the respondents stating that whatever reasons have been given are absolutely not satisfactory, much less reasonable. The applicants were very much aware about the death of the appellant and intentionally they had not informed the said fact to the Advocate.

5. In order to cut short, it can be said that both the learned Advocates appearing for the respective parties had made submissions in support of their respective contentions.

6. Definitely, when the sole appellant had expired way back on 03.08.2017, the applicants ought to have preferred the application to bring them on record within the prescribed period. However, they have tried to explain the delay of 608 days by saying that applicant Nos. 1 and 3 to 6 are the illiterate women and only applicant No.2 is the Karta of the family who was engaged in agricultural operations. Though it may not be an appealing reason, it is not in dispute that they are coming from rural background and the fact that the ladies are illiterate. Another fact also to be noted that the present respondent is the real brother of the appellant. Even he had not intimated to this Court that the appellant has expired. Under such circumstance, the reasons can be said to be reasonable to condone the delay, however, the inconvenience that has been caused to the respondent deserves to be compensated in terms of money. Hence, the following order :

ORDER

- i) The application is hereby allowed.

ii) The delay caused in bringing legal representatives of the appellant on record is hereby condoned subject to deposit of cost of Rs.5000/- in this Court within a period of one month from the date of this order.

iii) After the amount of cost is deposited, it be paid to the respondent.

iv) In the meantime, within a period of two weeks, necessary amendment to be carried out by the applicants in the appeal memo.

(Smt. Vibha Kankanwadi, J.)

Shubham/