

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

**935 CIVIL APPLICATION NO.10483 OF 2019
IN SA/204/2019 WITH CA/4339/2019 IN
SA/204/2019 WITH CA/4340/2019 IN SA/204/2019**

**SHAIKH ABDUL KADAR SHAIKH RASOOL
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE
COLLECTOR AND OTHERS**

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Mr.A.S. Deshpande, Advocate for applicant.
Mr.S.D. Munde, Advocate for respondent no.5.
Mr.S.S. Thombre, Advocate for respondent
no.7.

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**CORAM: V.L. ACHLIYA,J.
DATE : 06.09.2019**

ORAL ORDER:

Leave granted to correct
application.

2. The application is taken out to
bring the legal heirs of deceased respondent
no.6 on record for the reasons set out in
detail in the application.

3. In brief, it is the contention of
learned counsel for the applicant that after
receipt of notice issued in appeal, it has
transpired that the respondent no.6 died way

back in the year 2010 i.e. much before the hearing and the decision in appeal by the First Appellate Court. It is submitted that the legal heirs of deceased respondent no.6 ought to have been brought on record by the respondent no.7 i.e. the appellant before the First Appellate Court. The judgment and decree has been passed against the respondent no.6, who was dead at the time of decision in the case. In this back ground, learned counsel submits that in order to hear the appeal on the point of impact of judgment and decree passed against the dead person, it is necessary to bring the legal heirs of deceased respondent no.6 on record. In this background, learned counsel submits that the delay caused in taking steps cannot be termed as willful and intentional. It is further submitted that the appeal is yet to be admitted and in that view no prior notice is required to bring on record the legal heirs of deceased respondent no.6.

4. On due consideration of the submissions advanced in the light of pleadings in the application and the fact that the appeal is yet to be admitted, I am

of the view that the application deserves to be allowed. Accordingly, the application is allowed in terms of prayer clause "B". Necessary amendment/substitution be carried out within one week. After carrying out amendment/substitution, notice be issued to the legal heirs of deceased respondent no.6, returnable on 14th October, 2019. Hamdast is permitted.

5. List the appeal for hearing on 14th October, 2019.

6. Interim order if any to continue till 14th October, 2019.

[V.L. ACHLIYA]
JUDGE

SGA