

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

970 CIVIL APPLICATION NO.11915 OF 2018  
IN SA/262/2018 WITH CA/4387/2018 IN SA/262/2018

TUKARAM NEMAJI AND OTHERS  
VERSUS  
NARHARI NARAYANRAO UDGIRKAR AND OTHERS

...

Mr. M.V. Ghatge, Advocate for the applicants

Mr. U.B. Bilolikar, Advocate for the respondent No.1

Mr. S.H. Panchal, Advocate for the respondent Nos.5A to 5E

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**CORAM : SMT. VIBHA KANKANWADI,J.**

**DATE : 18<sup>th</sup> JANUARY, 2019**

**PER COURT :**

1 Present application has been filed for condoning the delay of 1326 days in bringing the legal representatives of deceased respondent No.5 on record.

2 Present applicants are the original defendant Nos.6 to 8. Present respondent No.1 is the original plaintiff. Plaintiff had filed suit for declaration of ownership, recovery of possession and mesne profit bearing R.C.S. No.53/2001, which came to be dismissed on 22.07.2008. Thereafter, the plaintiff filed R.C.A. No.122/2008, which came to be allowed, thereby

decreeing the suit on 08.11.2017. Hence, this Second Appeal. When the notices were issued to respondent No.5, the report was received that he has expired on 21.10.2014. After the requisite information is supplied to the appellants-applicants, the present application has been filed, however, there is delay.

3           The application has been objected on the ground that the delay is huge and not explained in respect of each and every day.

4           Heard both sides and perused the documents.

5           It is to be noted that R.C.A. No.122/2008 was preferred by the original plaintiff and during the pendency of that appeal, present respondent No.5, who was respondent No.4 in the appeal expired. It appears that after the said appeal was filed in 2008, said respondent No.4 Rangoji had appeared through Advocate. One Advocate was representing respondent Nos.2 to 5 and another Advocate was representing respondent Nos.6 to 8. Under such circumstance, by law the Advocate representing respondent Nos.2 to 5 was duty bound to inform the fact of death of his client to the Court. However, it appears that the said exercise has not been done and therefore, the appeal proceeded and

came to be allowed even against the respondent No.4. It cannot be said to be the mistake of present applicants not to bring him on record when the matter was before First Appellate Court. After the fact came to knowledge, when the notice issued to respondent No.5 herein was returned with remark that he is dead, the steps have been taken. Under such circumstance, reasonable ground is shown to condone the delay. Hence, following order.

**ORDER**

- 1           Application is hereby allowed.
- 2           Applicants are directed to bring the legal representatives of respondent No.5 on record.
- 3           Amendment be carried out within 15 days from today.

( Smt. Vibha Kankanwadi, J. )

agd