

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

**925 CIVIL APPLICATION NO.12894 OF 2018
IN SA/149/1988**

SABDA MAHADLI POLE (DECEASED) LRS RAMRAO AND OTHERS
VERSUS
MADHAVRAO GOPALRAO KASTURE AND OTHERS

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Mr. S.B. Talekar, Advocate for the applicants

Mr. A.S. Deshmukh, Advocate for the respondent No.1

Mr. U.R. Chavan, Advocate for the respondent No.6(E)

Mr. P.S. Agrawal, Advocate for the respondent Nos.1, 3Bc and 3Bd

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 25th APRIL, 2019

PER COURT :

1 Present application has been filed to bring the legal representatives of deceased respondent No.3B and 6B on record. There is delay of 1347 and 1178 days respectively. The applicants contend that the Second Appeal No.149 of 1988 was admitted and pending for final decision. The matter came up for hearing on 26.03.2015. Two weeks time was granted to get the instructions in respect of dead respondents but then there was miscommunication between the Advocates and the applicants. In the mean time, the Second Appeal was dismissed and Civil Application was filed for restoration of the same. When notices were issued in the Civil

Application, the applicants got knowledge about death of respondent Nos.3B and 6B. Respondent No.3B expired on 07.10.2014 and respondent No.6B expired on 25.03.2015. It is stated that the delay is unintentional and not deliberate.

2 The application is objected by learned Advocate for respondent Nos.3B/C and 3B/D, on the ground that in fact, the fact of the death of these two respondents was made known to the applicants on 26.03.2015 when the matter was on board, yet they did not get the death certificates in time and did not proceed with the Second Appeal.

3 It is to be noted that the Second Appeal is admitted long back and then it was waiting for its turn for final hearing. When the matter had come up for final hearing on 26.03.2015 information was given to the applicants in respect of death of respondents, but it appears that immediate action was not taken by the applicants. The suit was for recovery of lands and the pedigree was given. It appears that the deceased respondents were representing a branch. There are persons from the said branch on record. Therefore, without going into the aspect, as to whether there was abatement because of the death of these respondents and since the matter was admitted there might not be communication between the Advocate and the applicant, liberal approach is to be taken. At the same time, taking into consideration

the huge and inordinate delay respondent Nos.3B/C and 3B/D who are contesting the application deserves to be compensated in terms of money. Hence, following order.

ORDER

- 1 Application is hereby allowed.
- 2 The delay caused in bringing the legal representatives of respondent No.3B is hereby condoned, subject to deposit of costs of Rs.8,000/-, within 15 days from the date of this order.
- 3 After the deposit is made, the amount be distributed to respondent Nos.3B/C and 3B/D equally.
- 4 The delay caused in bringing legal representatives of respondent No.6B is hereby condoned.
- 5 The necessary amendment to bring the legal representatives on record be carried within 14 days from the deposit of the amount.
- 6 Civil Application disposed of accordingly.

(Smt. Vibha Kankanwadi, J.)