

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CIVIL APPLICATION NO. 12676 OF 2018
IN SECOND APPEAL NO. 764 OF 2010**

Gulabchand Pannalal Nahar ...Applicant

Versus

Hiralal Pannalal Nahar (Died through ...Respondents
LRs) & Ors.

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Mr. S. V. Dixit, Advocate for Applicant.

Mr. B. S. Kudale, Advocate for Respondent No. 1.

Mr. V. S. Deshmukh, Advocate H/F Mr. A. B. Kale, Advocate
for Respondent No. 1A.

Mr. Rajendra Deshmukh, Advocate for Respondents No. 1B &
3 to 5.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 23-01-2019.

ORAL ORDER :

01. The learned Advocate Mr. Deshmukh makes a submission that he has instructions to appear for respondent No. 1B. The learned Advocate Mr. Thigale makes a submission that he was previously appearing for respondent No. 1B, but, he has given no objection, therefore, he is discharged.

02. Present application has been filed for bringing the legal representatives of respondent No. 1 on record.

03. Respondent No. 1 expired on 7.11.2015. Prior to

that the second appeal is admitted. It is contended that the applicant is old person, suffering from various ailments. He could not come to know the details of legal representatives of respondent No. 1 immediately. But, thereafter, after sometime he got the necessary details. There is delay of 972 days. But, it is unintentional. It is stated that the right to sue survives against the legal representatives of respondent No. 1 and therefore, it is prayed that the delay be condoned and the abatement be set aside.

04. The learned Advocate appearing for the respondent No. 1A and 1B have strongly opposed the application on the count that the parties are real brothers and therefore, had the knowledge about the death of respondent No. 1. Therefore, the delay is inordinate and which has not been explained day to day.

05. Heard learned Senior Counsel Mr. V. J. Dixit for applicant, Mr. V. S. Deshmukh, learned Advocate holding for Mr. A. B. Kale, Advocate for respondent No. 1A and learned Advocate Mr. Rajendra Deshmukh for respondent No. 1B. The other legal representatives of respondent No. 1 were served. It is to be noted that the record does not contain any communication by the Advocate, who was representing the original respondent No. 1 intimating that

the respondent No. 1 has expired. Taking into consideration the age of the applicant that is 87 years old and the liberal approach that is required to be taken when the right to sue survives, the delay deserves to be condoned.

06. Hence, following Order;

ORDER

- (i) The application is hereby allowed.
- (ii) The delay caused in bringing the legal representatives of respondent No. 1 on record is hereby condoned subject to deposit of cost of Rs. 4,000/- in this Court within 15 days from today i.e. upto 6.2.2019.
- (iii) After deposit of the said amount, it be equally distributed to respondent No. 1A and 1B.
- (iv) Appellant to carry out the necessary amendment to bring the legal representatives of respondent No. 1 on record within 15 days.
- (v) The abatement as against respondent No. 1 is set aside.

[SMT. VIBHA KANKANWADI]

JUDGE

Dahibhate/-