

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

933 CIVIL APPLICATION NO.15528 OF 2016
IN SA/625/2005

BHIKAN VITHOBA AAGLE
VERSUS
TOTARAM RAISINGH AAGLE LRS SUMANBAI AND
OTHERS

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Advocate for Applicant : Mr Bhandari Anand P.
Advocate for Respondents 2-9 : Mr M.M. Joshi
Mr S R Dheple For R/12a-1 To 12a-5

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CORAM : SMT. VIBHA KANKANWADI, J.
Dated : March 15, 2019

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PER COURT :-

1. Learned advocate Mr. Joshi submits that, he has instructions to appear for respondent nos. 5A, 5B, 5D and 5E. He may file his vakalatnama in the office within two weeks from today.

2. Present application has been filed for getting the delay of 624 days condoned to bring the legal representatives of respondent no.5 on record. The appeal has been filed in the year 2005 and is admitted. It is stated that during the pendency of the appeal, respondent no.5 Nathu s/o Rama Aagle expired on

aaa/-

10.11.2014. It is stated that due to the ill-health of the applicant and communication gap, said delay has been caused, which is unintentional. It is also stated that there is no abatement. Hence prayer for setting aside the abatement, condonation of delay and bringing the legal representatives of respondent no.5 on record is made.

3. Application has been objected by the proposed legal representatives of respondent no.5-A, B, D and E on the ground that deceased was the real relative of the appellant/applicant and, therefore, he cannot say that he had no knowledge about death of respondent no.5. The delay has not been properly and sufficiently explained.

4. First fact that is required to be considered is that though the parties may be related with each other, a duty is casted on the learned Advocate for the respondent to inform about the fact of death of respondent in view of Order 22 Rule 10-B of Civil

Procedure Code.

5. In the present case, there was no information supplied by the learned Advocate for the respondent regarding death of respondent no.5. Further, taking into consideration the age of the applicant, his ill-literacy and occupation as agriculturist, whatever reason has been given for the delay appears to be reasonable and sufficient to condone the delay. Hence, application is allowed in terms of the prayer clause 'B', 'C' and 'D'. The legal representatives of respondent no.5 be brought on record within 14 days from the date of this order. Application is accordingly disposed off.

(SMT. VIBHA KANKANWADI, J.)

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