

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

**926 CIVIL APPLICATION NO.13881 OF 2018
IN SA/254/2017**

BABURAO GANGADHAR GHODKE AND OTHERS

VERSUS

HIRAMAN KHEMAJI GHODKE AND OTHERS

...

Mr. D.P. Deshpande, Advocate for the applicants

Mr. S.P. Katneshwarkar, Advocate for the respondent Nos.1 and 2

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 25th APRIL, 2019

PER COURT :

1 Present application has been filed for bringing legal representatives of respondent No.3 on record, however, there is delay of 2417 days. The applicants are the original plaintiffs who had filed R.C.S. No.252/2006 before 2nd Joint Civil Judge Junior Division, Beed for possession. It was decreed. Original defendant Nos.1 and 2 filed R.C.A. No.75/2011 before learned District Judge-5, Beed. That appeal came to be allowed and the suit was dismissed on 21.10.2016. It is stated that respondent No.3 who was defendant No.3 before the Trial Court and respondent No.4 in R.C.A. No.75/2011 expired on 06.01.2012 during the

pendency of the appeal, however, his legal representatives were not brought on record in the appeal. It is stated that the applicants are old, illiterate and rustic and due to inadvertence when the Second Appeal came up for hearing on 11.01.2017 they found that legal representatives of respondent No.3 have not been brought on record. It is stated that the delay is not deliberate.

2 The proposed legal representatives of respondent No.3 were served, however, they have not appeared. Under such circumstances, whatever has been stated in the application has gone unchallenged. Original defendant Nos.1 and 2 had filed the appeal and inspite of death of respondent No.4 therein, the legal representatives were not brought on record before the First Appellate Court. Under such circumstance, the delay is unintentional and deserves to be condoned. Hence, it is condoned. The application is allowed. The legal representatives be brought on record within 14 days.

3 Notice in respect of Second Appeal be issued to the legal representatives after they are brought on record, to be made returnable 8 weeks thereafter.

(Smt. Vibha Kankanwadi, J.)