

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

911 CIVIL APPLICATION NO.925 OF 2018
IN WP/4759/2002

WITH
CA/9445/2017 IN WP/4759/2002

RADHAKISAN MULCHAND GINDODIYA
VERSUS
RAMCHANDRA NOBHRAJ KINGAR DIED LRS SHILADEVI RAMCHANDRA
KINGAR AND OTHERS

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Advocate for Applicants : Mr. Patil Shrikant S.
Adv M H Patil For R-sole Patil.

CORAM : P.R. BORA, J.
DATED : 3rd July, 2019.

PER COURT:-

1. Heard Shri Patil, learned counsel appearing for applicant and Shri Mahesh Patil, learned counsel appearing for respondents.

2. This is an application seeking condonation of delay, which has occurred in bringing on record legal heirs of deceased respondent. The respondent is stated to have expired on 28th January, 2016. The present application is filed on 10th August, 2017. The delay caused in filing the application is of 1 years and 105 days.

3. Learned counsel appearing for the

applicants submitted that in CA No.9445/2017 filed by the petitioner, seeking early hearing of of the petition, it was mentioned by the learned counsel appearing for the sole respondent before the court that the sole respondent has died. The learned counsel submitted that thereafter within reasonable time, after obtaining the Death Certificate, he has filed the application for bringing the legal heirs of the deceased respondent on record. The learned counsel submits that the delay which has caused is unintentional and for bonafide reasons.

4. The application is strongly opposed by the legal heirs of the deceased respondent. Affidavit in reply is filed on behalf of legal heirs of the deceased respondent. It is contended that the petitioner was well aware of demise of sole respondent and has attended last rituals of the deceased respondent. It is further contended that the shop of deceased respondent is adjacent to the residence of the petitioner and as such also, the petitioner was having every knowledge of the death of sole respondent after demise of the respondent. In the circumstances, the learned

counsel prayed for rejection of the application.

5. After having considered the submissions so made, it appears to me that there appears no malafide intention in bringing on record the legal heirs of the deceased respondent. The fact which has been stated in the reply affidavit that the present petitioner has attended funeral etc, has been strongly denied by the learned counsel. However, I do not wish to go into merits of the said matter. It appears to me that the matters are ultimately to be decided on merits and not to be thrown on technicalities. By filing the application belatedly, no gain could have been achieved by the present petitioner. As such, no malafides can be attributed on the part of the petitioner. I am, therefore, inclined to allow the application. Hence, following order.

ORDER

- i. The application for condonation of delay is allowed. Abatement, if any, set aside.
- ii. The legal heirs of deceased respondent, as are mentioned in the application be taken on record.

(4)

Necessary amendment be carried out within
a week.

iii. Both the applications stand
disposed of.

iv. List the matter for final
disposal after four weeks.

(P.R. BORA)
JUDGE

BDV