

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Civil Application No.1462/2019

in

First Appeal No.431/2017

with

Civil Application No.1138/2019

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. V. S. Tadke I/b. D. P. Shinde for the
Applicant in Civil Application
No.1462/2019 and for Respondent in
Civil Application No.1138/2019

Mr. T. S. Ingale for the Applicant in Civil
Application No.1138/2019

CORAM : K.K.TATED, J.

DATED : JUNE 24, 2019

P.C.

1 Heard. By this Civil Application, the Applicant acquiring body is seeking to bring the legal heirs on record of deceased Respondent No.1 claimant Shivaji Rajaram Patil who died on 29.08.2016.

2 The learned counsel for the Applicant submits that they learnt about the death of Respondent No.1 when the matter was on board before the learned Registrar (Judicial-II) for taking steps against Respondent No.1 on 26.10.2018. Thereafter they tried to find out the names and address of the legal heirs. He

submits that in the meanwhile, they received letter dated 04.08.2018 from the advocate for Respondent No.1. After making enquiry they filed the Civil Application to bring the legal heirs on record of deceased Respondent.

3 The learned counsel for the Applicant submits that there is delay in filing the Civil Application because they took some time to find out the names and address of the legal heirs of deceased. He submits that in the interest of justice this Hon'ble Court be pleased to allow the Civil Application and allow the Applicant to bring the legal heirs on record of deceased Respondent. He submits that if the delay is not condoned, irreparable loss will be caused to them.

4 On the other hand, the learned counsel for the Respondent No.1 has vehemently opposed the Civil Application. He submits that in spite of knowledge about the death of Respondent No.1, the Applicant has failed and neglected to make an Application immediately. He submits that as soon as the award passed by the Reference Court they filed the Execution

Application and served a copy thereof on the other side. Not only that advocate for Respondent No.1 has filed a letter dated 04.08.2018 informing the other side about the death of Respondent No.1 along with names and address of legal heirs. In spite of that the Applicant has failed to take appropriate steps immediately. Hence, there is no substance in the Civil Application. Same may be dismissed with costs.

5 Considering the submissions made by the learned counsel for the Applicant and the averments made in paragraph 3 and 4 of the civil Application, I am satisfied that the Applicant has made out a case for allowing the present Civil Application, however, they have to pay cost of Rs.2500/- to the Respondent or their advocate within four weeks from today.

6 Hence, the following order:

- a) Delay in filing the Civil Application is condoned.
- b) Abatement is set aside.
- c) The Applicant to bring the legal heirs on record of the deceased Respondent

No.1 in the First Appeal as well as the pending Civil Application on or before 31.07.2019, failing which the Civil Application shall stand dismissed without further reference to the court.

d) The Applicant to serve an amended copy of the First Appeal and the Civil Application on the other side immediately thereafter.

e) The Applicant to pay costs of Rs.2500/- to the Respondent or their advocate on or before 20.07.2019 and place a receipt thereof on record, failing which the Civil Application shall stand dismissed without further reference to the court.

f) Civil application stands disposed off accordingly.

g) No order as to costs.

h) Civil Application No.1138/2019 filed by the legal heirs of original claimant seeking permission to withdraw the amount deposited by the acquiring body to come up on board on 02.08.2019

(K.K.TATED, J.)