

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.944 OF 2019
IN
SECOND APPEAL NO.633 OF 2002**

Shivaji Dattatraya @ Dattu Misal
(deceased through L.Rs.)

1A. Ahilya Shivaji Misal & ors.

... Applicants

Vs.

Rajabai Rangnath Bhingare & ors.

... Respondents

.....

Ms. Prabha Badadare I/b. Mr. P.R. Arjunwadkar for Applicants.
Mr. Amey V. Chandorkar for Mr. Ajay A. Joshi for Respondent
Nos.1 & 6.

Mr. Ashok M. Misal for Respondent Nos.2 & 5.

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CORAM : M. S. KARNIK, J.

DATE : 26th JULY, 2019.

P. C.:

1. This is an application for bringing the legal heirs of sole appellant Shivaji Dattatraya @ Dattu Misal on record.

2. In the application it is stated that the applicant No.1A to 1E are the legal heirs. Second Appeal is of the year 2005.

3. There is a delay of 6 years and 26 days in filing the application. The application is vehemently opposed by the

learned counsel appearing on behalf of respondent Nos.2 and 5. Learned counsel would submit that no reasons are mentioned in the application for condoning the delay. He moreover submits that during the pendency of the Appeal some third party rights have been created within the family.

4. It is stated that during the pendency of the Appeal the sole applicant died. In my opinion, the right to contest this Appeal should not be foreclosed only because the heirs of the applicant could not be brought on record within time. Learned counsel for the applicant states that the legal heirs are poor agriculturist and therefore they are not aware of the procedural aspects hence did not intimate their Advocate about the death of the appellant.

5. In my opinion, the delay caused in filing the application deserves to be condoned subject to compensating respondent Nos.2 and 5.

6. Learned counsel for the respondent Nos.1 and 6 are supporting the Applicants and therefore he has no objection if the application is allowed.

7. Subject to payment of cost of Rs.2,000/- (Rupees Two Thousand) to the respondent Nos.2 and 5 within a period of two weeks from today, the Civil Application is allowed in terms of prayer clause (b).

(M. S. KARNIK, J.)