

DDR

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

**CIVIL APPLICATION NO. 1834 OF 2017
IN
SECOND APPEAL NO. 1076 OF 2006**

Balutai Hambirrao Yadav ..Applicant
vs.
Sakharam Sripati Sankpal & ors. ..Respondents

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Shri S.S. Pakale for applicant.
Shri S.T. Bhosale I/b. Shri Dilip Bodake for respondent Nos. 1
and 2.

....

CORAM : M.S.KARNIK, J.

DATE : 12th JULY, 2019

P.C. :

Leave to amend. Amendment to be carried out
forthwith.

2. This is an application for bringing the legal heirs of
respondent No.2 on record who died on 5/9/2011. The
applicant could not inform his advocate immediately as he was
not aware about the procedure. Later on having realised that the
legal heirs of respondent No.2 are to be brought on record, he
immediately applied for death certificate of respondent No.2

and contacted his advocate. There is a delay of 5 years and 354 days in filing the application.

3. The application is opposed by learned counsel for respondents.

4. Though there is a delay in filing the application, in my opinion, the applicant deserves to be given an opportunity to contest the matter on merits. The right to argue the Appeal on merits should not be foreclosed.

5. The application is accordingly allowed subject to payment of cost of Rs.5000/- (rupees five thousand only) to the respondents within a period of 2 weeks.

6. The applicant is permitted to bring on record the legal heirs of respondent No.2 viz. Respondent Nos.2A to 2E by carrying out consequential amendments within 2 weeks.

7. The delay in filing the application is condoned.

8. The abatement is set aside.
9. The Civil Application is disposed of.

(M.S.KARNIK, J.)