

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
CIVIL APPLICATION NO.2717 OF 2018
in
FIRST APPEAL NO.142 OF 2004**

Hariprasad Vithal Shetty & ors ... Applicants

vs

M/s Deepak Builders Pvt Ltd & anr .. Respondents

Mr.S.M.Khaire for Applicants

Ms.Harsha Shah for Respondents.

CORAM : K.K.TATED, J

DATE : 25th MARCH, 2019

P.C

Heard learned counsel for the parties.

2. By this Civil Application, the applicant is seeking permission to bring the legal heirs of deceased respondent no.3-Shankar Rao on record who died on 19.6.2014. Learned counsel for the applicant submits that they have already filed affidavit of service stating that all the respondents are duly served. Statement is accepted.

3. In spite of service, nobody appears on behalf of the remaining respondents. There is a delay in filing the Civil Application. Learned counsel for the applicant submits that for want of knowledge, it remained on their part to take appropriate steps to

bring the legal heirs of the deceased respondent no.3 on record. He submits that in the interest of justice, this Hon'ble Court be pleased to permit the applicant to bring the legal heirs of the deceased respondent no.3 on record in the pending First Appeal.

4. Considering the submissions made by the learned counsel for the applicant, and as inspite of service nobody appeared for the proposed respondents, I am satisfied that the applicant has made out a case for allowing the Civil Application. Hence, the following order :

O R D E R

- a) Abetment is set aside.
- b) The delay in filing the Civil Application is condoned.
- c) The applicant is permitted to bring the legal heirs of the deceased respondent no.3 on record in First Appeal No.142 of 2004 on or before 26.4.2019 failing which the Civil Application shall stand dismissed without reference to the Court.
- (d) After the amendment is carried out as stated above, Registry is directed to issue notice to the added Respondents in First Appeal No.142 of 2004.

(e) In addition to usual mode of service in First Appeal, the applicant is permitted to serve the un-served respondents by private notice alongwith entire proceedings either by RPAD or hand delivery and file affidavit of service to that effect on or before 12.4.2019 failing which the appeal shall stand dismissed against the un-served respondents without referring reference to the Court.

{K.K.TATED, J}