

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

**CIVIL APPLICATION NO.2113 OF 2017
IN
WRIT PETITIN NO.6829 OF 2014**

**Rajendra Anantrao Gaikwad : Applicant
versus
Kashinath Anantrao Gaikwad and ors. : Respondents.**

**Mr. A B Tajane for the Applicant.
Mr. Saurabh Karade I/by Mr. Surel S shah for the Respondent Nos.1 to 5,
9 and 10.**

**CORAM: K.K. TATED, J
DATED : FEBRUARY 01, 2019**

P.C. :

- 1 Heard the learned counsel for the parties.
- 2 Though the other Respondents are duly served, no-one appears for them when the matter is called out.
- 3 The learned counsel Mr. A B Tajane appearing for the Applicant submits that Respondent No.6 – Shantabai Anantrao Gaikwad was expired on 01/10/2009. He submits that the legal heirs of deceased Respondent No.6 are already on record as the Respondent Nos.1 to 5. He submits that in the interest of justice, this Hon'ble Court be pleased to allow the Applicant to delete the Respondent No.6 from the cause title of the Writ Petition and allow him to bring the Respondent Nos.1 to 5 as the legal heirs of the Respondent No.6.

4 The learned counsel for the Applicant submits that Respondent No.7(a) – Vishwanath Ramaji Waghole was expired on 29/04/2015. He submits that some of the legal heirs of the deceased Respondent Nos.7 and 7(a) are already on record. He submits that some of the legal heirs are not brought on record. Hence he preferred the present Civil Application for bringing the legal heirs of the Respondent Nos.7 and 7(a) on record. The learned counsel for the Petitioner submits that inadvertently it has remained to take appropriate steps to bring the legal heirs of the Respondent Nos.7 and 7(a) on record. He submits that in interest of justice, this Hon'ble High Court be pleased to set aside the abatement order dated 04/08/2016 and permit the Applicant to delete the Respondent No.6 from the cause title of the Writ Petition and permit the Applicant to bring the legal heirs of the Respondent Nos. 7 and 7(a) on record. He submits that if the present Civil Application is not allowed, irreparable loss would be caused to the Applicant.

5 On the other hand the learned counsel Mr.Saurabh Karade I/by Advocate Mr. Surel S Shah appearing for the Respondent Nos.1 to 5, 9 and 10 vehemently opposes the present Civil Application. He submits that the Applicant has not shown sufficient cause for the condonation of inordinate delay in filing the present Civil Application. Hence there is no substance in the present Civil Application and the same is required to be dismissed with costs.

6 I heard both the parties at length.

7 Considering the fact that the legal heirs of the deceased
Respondent No.6 are already on record as Respondent Nos.1 to 5, I am of the
opinion that the Applicant can be permitted to delete the name of the deceased
Respondent No.6 from the cause title of the Writ Petition and allow him to
treat the Respondent Nos.1 to 5 as the legal heirs of the Respondent No.6.

8 Inadvertently it remains on the part of the Applicant to bring on
record the heirs of the Respondent No.7 and 7(a). Considering the
submissions made by the learned counsel for the Applicant and as because of
the mistake on the part of the advocate, the Applicant should not be suffered. I
am of the opinion that the Applicant has made out a case for allowing the
present Civil Application. Hence the following order :-

a. The order dated 04/08/2016 passed by this Court is recalled and
the Writ Petition No.6829 of 2014 is restored to file as against the Respondent
Nos.7(a) and 6 for hearing on merits.

b. The Applicant is permitted to delete the name of the Respondent
No.6 from the cause title of the Writ Petition No.6829 of 2014 and treat the

Respondent Nos.1 to 5 as the legal heirs of the deceased Respondent No.6.

c. The Applicant is permitted to bring on record the legal heirs of the Respondent Nos.7 and 7(a).

d. Amendment to be carried out on or before 08/03/2019 failing which the Civil Application shall stand dismissed without further reference to the Court.

e. If the amendment is carried out within stipulated time as aforesaid, the Applicant is directed to serve the amended copy of the Writ Petition No.6829 of 2014 on the added Respondents by private notice either by RPAD and/or by hand delivery and to file an Affidavit of service to that effect in the Registry.

f. The Civil Application stands disposed of accordingly.

g. No order as to costs.

(K.K. TATED, J.)