

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 2916 OF 2016
IN
WRIT PETITION NO. 5895 OF 2015

M/s. Botanium Limited
Through their Constituted Attorney
Holder Shri. Ajit Walvekar. ... Applicant
Vs

Smt. Motibai Sukur Patil
Since deceased through Lrs
Mrs. Damyanti Sadanand Pawar ... Respondent

Mr. Sanjay K. Gunjkar i/b. Jaydeep Deo, Advocate for the
Applicant.

CORAM : SANDEEP K. SHINDE J.
DATE : August 14th, 2019

P.C. :

1. It is an application to bring legal representatives of sole respondent on record and prayed that delay of four years caused therefor, may be condoned. The applicant in paragraph nos. 5 and 6 of the application states that he learnt about the death of sole respondent, after perusing the Bailiffs' report dated 12.07.2016 and immediately thereafter he preferred this application on 20.10.2016.

2. Learned counsel for the petitioner has relied on the order dated 28.01.2005 passed in Civil Application No. 70 of 2005 in Second Appeal No. 216 of 1999 wherein it is observed in paragraph no. 1 & 2 as under :-

“1. One of the office objections raised in this application is regarding non-filing of the death certificate by the Appellants. A perusal of the Appellate Side Rules and in particular Rules contained in Chapter IV shows that in case of Civil Application for bringing on record the legal representative of a deceased party, there is no requirement of filling death certificate along with the Application. However, in view of Rule 24 of Chapter IV, such Application will have to be supported by an affidavit. There is no requirement even under Order XXII of the Code of Civil Procedure, 1908 of filling of death certificate along with the Application for bringing on record the legal representatives.

2. *Such Civil Application must normally state the date of death of party concerned so that period of limitation can be calculated. However, there are cases where the Applicant is unable to know the date of death of the party concerned even after exercise of due diligence. In such cases Civil Applications can be accepted subject to objection regarding limitation when specific averments are made that the date of death of the party could not be ascertained inspite of efforts made.”*

3. I have perused the application. It appears that the petitioner got the knowledge of death of the respondent for the first time on 23.08.2016. It is in the circumstances stated in the application that he could not file copy of death certificate of sole respondent. That for the reasons stated in the application and in view of order passed in Civil Application No. 70 of 2005 (as reproduced above), the application is allowed in terms of prayer clause (a) and (b). The applicant shall carry out the consequential amendment within two

weeks from today. Civil Application is allowed in the aforesaid terms and disposed of accordingly.

(SANDEEP K. SHINDE, J.)