

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

**CIVIL APPLICATION NO.4407 OF 2016
IN
CIVIL APPLICATION NO.476 OF 2011
IN
FIRST APPEAL NO.823 OF 1996**

Krishna Pandurang Kadam since
deceased through his legal heirs and
representatives-

Dinesh Krishna Kadam and Ors.

...Applicants/Appellants

Versus

Vithoba Balu Kadam since deceased
through his legal heirs and
representatives-

a) Asha Vithoba Kadam and Ors.

...Respondents

.....

Mr. Vishwajeet S. Kapse for the Applicants

Mr. G.B. Walawalkar i/b. Mr. S.P. Thorat for the Respondent Nos.4 to 6.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 1st OCTOBER, 2019.

P.C.:-

The Applicants herein have sought to condone the delay of 4 years in filing the application and further to recall the order dated 17th February, 2011 and restore the Civil Application No.476 of 2011 filed in the First Appeal No.823 of 1996.

2. The Applicants herein had filed an application for bringing

on record the legal representatives of the deceased Appellant No.1. By order dated 17th February, 2011, this Court had ordered to issue notice to the proposed legal representatives. The Applicants were directed to serve notice by registered post and /or by courier service and /or by hand delivery to the Respondent and to file affidavit in service within a period of one week from the returnable date. The Applicants were put to notice that the application would stand dismissed for non prosecution for not complying the said conditional order. Failure to comply with the said conditional order resulted in dismissal of the application.

3. Notice of the application was issued to the Respondent Nos.1(a) and 1(b). The records reveal that they have refused to accept the notice and the service is treated as good service as per the order dated 26th February, 2016. Proceedings against the Respondent No.1 (c) have already abated. The Respondent Nos.4 to 6 have no objection for condoning the delay and restoring the application.

4. The learned counsel for the Applicants states that the Applicants shall comply with the conditions in the order dated 17th February, 2011 within a period of two weeks. Statement is accepted.

5. In the light of the said statement and in view of the reasons stated in paragraphs 3 and 4 of the application, the delay is condoned. The civil application No.476 of 2011 is ordered to be restored subject to payment of cost of Rs.15,000/- to be paid to the Juvenile Justice Fund.

6. The civil application No.4407 of 2016 stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

Megha
Parab

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