

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CIVIL APPLICATION (CAS) 1400 OF 2017

&

CIVIL APPLICATION (CAS) 1401 OF 2017

IN

SECOND APPEAL 78 OF 2009

(Smt. Najimunnisa Begum w/o. Umar Khan Musalman & ors..vs..Haji Rahematali s/o.
Sarfuddin & ors.)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri C.A. Joshi, counsel for applicants.
Shri N.D. Khamborkar, counsel for respondent 4.

CORAM: ROHIT B. DEO, J.

DATE: 12th MARCH, 2019.

This Civil Application is taken out by the appellants for condonation of delay of 3790 days in bringing on record legal heirs of deceased respondent 4 and for setting aside abatement.

2 Concededly, the counsel who was representing respondent 4 did not bring on record that his client expired on 7.3.2007. It was only on 12.10.2017 when the matter was listed before the Registrar that the appellants came to know of the demise of respondent 4.

3 The proposed legal heirs of respondent 4 who are represented by learned counsel Shri N.D. Khamborkar, are opposing condonation of delay. However, the appellants can not be blamed for the delay. It was the duty of the counsel appearing for respondent 4 to disclose to the Court that his client had expired. There is nothing on record to suggest that the appellants were aware of the death of respondent 4 prior to

12.10.2017.

4 In this view of the matter, the application is allowed.

5 The delay in bringing on record the legal heirs of
respondent is condoned. The abatement of the appeal as regards
respondent 4 is set aside.

CIVIL APPLICATION 1401 OF 2017

The application is allowed.

2 The legal heirs to deceased respondent 4 be brought
on record and the cause title be corrected within a week.

3 The learned counsel Shri N.D. Khamborkar, waives
service on behalf of the legal heirs of deceased respondent 4.

4 At this stage, it is submitted by Shri N.D. Khamborkar
that other than the legal heirs referred to in the application,
there are three more legal heirs namely Javed Beg, Kamroddin
and Abeda Bee. On the oral request of the learned counsel
Shri C.A. Joshi, permission is granted to bring on record the
aforesaid three legal heirs.

5 Shri N.D. Khamborkar, the learned counsel waives
service for the said three legal heirs also.

JUDGE