

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**922 CIVIL APPLICATION NO.5562 OF 2019
IN SA/1041/2004 WITH CA/7549/2004 IN
SA/1041/2004**

PRATIBHA PRADIP MALI
VERSUS
PRADEEP UNDLIK MALI DEAD THROUGH LRS PRASHANT
PRADIP MALI

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Advocate for Applicant : Mr. Choudhari Sushant B & Mr. B.S.
Shinde

Advocate for Respondent : Mr. E.S. Murge

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**CORAM : S.M. GAVHANE, J.
DATED : 10TH JANUARY, 2020.**

PER COURT:-

. The appellant/applicant against whom decree for divorce has been passed by the learned District Judge, Dhule in R.C.A. No.38 of 1995 on 30.07.2001 in the appeal filed by her husband-respondent, has moved this application to allow her to bring on record legal heir, who is son of her husband-deceased respondent by condoning the delay.

2. Learned counsel appearing for the applicant-wife submitted that this appeal is admitted long back. During the pendency of the appeal, respondent-husband died on 17.09.2014 at Dhule. Prashant Pradip Mali is the only legal heir of the respondent. It is submitted that the applicant is residing at different place and therefore, she could not take steps to bring on record legal heir of respondent in time, so

also she could not contact her advocate in time to inform about the death of respondent. Therefore, according to the learned counsel for the applicant, the delay caused in filing the application is not intentional or deliberate. As the same has been caused due to unavoidable reasons the same may be condoned.

3. Learned counsel for the applicant also submitted that the appeal of the applicant is maintainable against the legal heir of respondent-husband relying upon the decision of the Hon'ble Apex Court in the case of "**Yallawa (Smt) Vs. Shantava (Smt), (1997) 11 SCC 159.**" To support his submission that in the given set of circumstances, as the applicant is residing at a different place than the place where the respondent was residing at the time of his death and appeal was admitted long back, it is a fit case to condone the delay caused in bringing legal heir of the respondent the learned counsel has relied upon the decision of the Hon'ble Apex Court in the case of "**Perumon Bhagvathy Devaswom, Perinadu Village Vs. Bhargavi Amma (dead) by Lrs and Others, 2009(2) Mh.L.J 1**", and particularly he relied upon head note (d), wherein the appeal was admitted in 1993 and did not come up for hearing till 2005 and the respondent died in between. It

was held that the Court should not punish the appellant for his ignorance of the death of the respondent, by refusing to setting aside the abatement. Thus, learned counsel appearing for the applicant has prayed to allow the application.

4. Mr. E.S. Murge, the learned counsel for proposed legal heir of the respondent though opposed to grant the application, has not filed any material to substantiate the objection.

5. I have carefully considered the submissions made by the learned counsel appearing for the applicant and proposed legal heir of the respondent. Considering the submissions made by the learned counsel appearing for the applicant, the fact that the applicant-wife is residing at a different place than the place where the respondent was residing i.e. Dhule at the time of his death and the contention of the applicant that therefore she could not take steps to bring on record legal heir of respondent-husband, I find that the delay caused is not intentional or deliberate and also having regard to the fact that the appeal was admitted on 17.11.2008 and respondent died on 17.09.2014, it is just to condone the delay caused in moving

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the application and to allow the applicant to bring on record legal heir of the respondent. Therefore, application is allowed. Delay is condoned. Abatement of appeal against the respondent is set aside. Applicant to carry out necessary amendment in the cause title of the appeal to show legal heir of the respondent within two weeks.

6. Place the appeal for further consideration on 20.02.2020.

(S.M. GAVHANE, J.)