

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

940 CIVIL APPLICATION NO.8684 OF 2019
IN SA/671/2011 WITH CA/14854/2011 IN SA/671/2011 WITH
CA/1024/2015 IN SA/671/2011

HARI HILAL PATIL
VERSUS
RUKHMABAI SHAMRAO PATIL (DIED) LRS SHAMRAO AND OTHERS

Mr. V. B. Patil, Advocate for the applicant

Mr. P. K. Deshmukh, Advocate for respondent Nos. 1 to 7

CORAM : S. M. GAVHANE, J.

DATED : 17.01.2020

PER COURT :-

. Applicant/original defendant who has filed second appeal aggrieved by the dismissal of Regular Civil Appeal No. 123 of 2008, has filed this application to condone the delay of 1863 days caused in filing this application to bring on record the LR's of sole respondent and to allow him to bring on record the LR's of the respondent.

2. Mr. Patil, learned counsel appearing for the applicant referring to paragraph Nos. 3 to 9 of the application, submitted that after death of respondent on 19/03/2014 applicant tried to get the names of LR's of respondent, but as he could not get the names of LR's, request was made to this Court to direct the advocate

representing the deceased respondent to furnish the names of deceased respondent. It is submitted that as per order 17/07/2019, advocate representing the deceased respondent informed the Court that within one week he would furnish the names of LR's of respondent, but actually no names were furnished. It is submitted that thereafter, advocate for deceased respondent furnished the names of LR's of respondent on 23/07/2019 as per Exhibit-D and then immediately on 25/07/2019 this application was filed. Therefore, according to learned counsel, in fact, there is no delay, but in case there is a delay the same may be condoned and applicant may be permitted to bring on record the LR's of the respondent as requested in the application by allowing the application.

3. Learned counsel appearing for the proposed LR's of the respondent submitted that applicant and respondent are from the same village and therefore, applicant had knowledge of death of the respondent, but he did not take steps to bring on record LR's of respondent and therefore, request of applicant may not be considered.

4. There is no dispute that respondent died on 19/03/2014. It appears that as noted in the order dated 17/07/2019 the learned counsel representing the deceased respondent had informed this Court that he will furnish names of the LR's of respondent within one week. It appears that in the light of said order Exhibit-D enquiry report of heirs containing names of the LR's of respondent was furnished. In all the above circumstances it appears that the applicant was not aware about the names of LR's of respondent and therefore, delay has been caused in getting the names of the LR's of the respondent. Considering the same and submissions made by the learned counsel appearing for the applicant, referring the reasons given in paragraph Nos. 3 to 9 of the application and having regard to the fact that appeal was admitted on 14/02/2012 and thereafter respondent died in 2014, it is just to allow the application to condone delay and to allow the applicant to bring on record the LR's of the respondent. Therefore, delay is condoned and applicant is allowed to bring on record LR's of respondent. Thus, application is allowed in terms of prayer clauses (B) and (C).

Applicants to carry out necessary amendment within two weeks in the cause title of the appeal to show LR's of the respondent. After the LR's of respondent are brought on record by carrying necessary amendment in the cause title of the appeal, Mr. Deshmukh, learned counsel waives service of notice of appeal for them.

5. Place the appeal for further consideration on 02/03/2020.

[S. M. GAVHANE, J.]