

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

**CIVIL APPLICATION NO.7245 OF 2022
IN SA/17/2009**

**AMINABI SHAIKH ABDUL KARIM DECEASED LRS. SHAIKH SADIQUE
SHAIKH KAREEM MOMIN AND ANR.**

VERSUS

SHARFODDIN MOHIYODDIN SHAIKH

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Advocate for Applicants : Mr. Amol S. Sawant

Advocate for Respondent : Mr. Jayant R. Shah

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CORAM : BHARAT P. DESHPANDE, J.

DATED : 19th AUGUST 2022

PER COURT :

This is an application for condonation of delay, setting aside abatement, if any, and bringing legal heirs of deceased appellant in Second Appeal No. 17 of 2009.

2. Heard learned counsel for both the parties.

3. Learned counsel for applicants submits that both the applicants being son of deceased appellant were not aware about pendency of the Second Appeal filed by the appellant and they got the knowledge only when the advocate for appellant contacted them, immediately after the lockdown period was relaxed. Only thereafter, they approached the advocate for appellant and filed application for setting aside abatement, condonation of delay and bringing them on record.

4. Reply affidavit is filed on behalf of respondent, wherein objections have been raised, stating that, it is highly improbable that the sons of the deceased appellant were not knowing about the litigation, which is going on from last 21 years. Therefore, it is their contention that, the reasons disclosed in the present application is not sufficient enough to condone the delay, set aside abatement and to allow them on record.

5. It is mentioned in the present application on affidavit that one son of the deceased appellant staying separately, whereas, the applicant who affirmed the present affidavit was staying with the deceased.

6. The contention that applicants were not knowing about pendency of the Second Appeal cannot be ruled out. Normally, it is the elder person who is of the family looking after the litigation. There is no deliberate intention on the part of applicants in approaching this Court belated for filing the application for bringing them on record.

7. The record of Second Appeal shows that advocate for respondent filed pursis on 5th February 2020 intimating about the death of appellant and enclosing death certificate. Only on the basis of such communication, which was handed over to the advocate for appellant, he tried to contact the legal heirs, however, due to pandemic and lockdown period it was not possible to contact the legal heirs.

8. Learned Registrar (Judicial) vide order dated 17th November 2021 observed that Second Appeal is abated as the sole appellant expired and legal heirs were not brought on record within time.

9. Considering the above submissions, the reasons disclosed in the application for condonation of delay and setting aside abatement, in the interest of justice, such application needs to be allowed as the Second Appeal was admitted in the year 2009. Hence the order :

ORDER

- (i) The application stands allowed.
- (ii) The delay in filing application for bringing legal heirs is condoned.
- (iii) Abatement is set aside. Legal heirs are permitted to be brought on record in cause title.
- (iv) Amendment to be carried out within a period of 14 days.
- (v) The application stands disposed of.

(BHARAT P. DESHPANDE, J.)