

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

37 CIVIL APPLICATION NO. 10472 OF 2019
IN
SECOND APPEAL NO.131 OF 2019

PURSHOTTAM S/O GOPAL CHAUDHARI AND OTHERS
VERSUS
MANMAL S/O SHIVLAL SANCHETI DEAD THROUGH LRS
LALCHAND S/O BHAVARCHAND JAIN AND OTHERS

.....
Advocate for Applicants : Mr. Hemant Surve
Advocate for Respondents : Mr. Y. G. Gujrathi
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CORAM : BHARAT P. DESHPANDE, J.
DATED : 25th JULY 2022

PER COURT:-

1. Leave to amend prayer clause "B". Amendment be carried out forthwith.
2. Heard both sides.
3. By way of present application, the applicants pray for condonation of delay of 1212 days caused in bringing legal heirs of deceased respondent No.1(4) on record.
4. By order dated 6.9.2019, notices were issued to the proposed legal heirs. Office note shows that all proposed legal heirs as mentioned in para 3 of the present application are duly served. However, no one is appearing for them. Learned counsel for the

respondents informed that he has no instructions to appear on behalf of proposed legal heirs.

5. Learned counsel for the applicants submitted that original respondent No.1 (4) expired on 26.12.2015. However, at that time, the matter was pending before the first appellate court wherein deceased respondent No.1(4) was appellant No.1 (4). No intimation was given by the other respondents about death of the said party even before the first appellate court or before this Court.

6. In the present application, the applicants have disclosed that they were not aware about death of respondent No.1 (4) till it was brought to their notice in the month of July, 2019 and therefore, immediately application is filed for condonation of delay, setting aside the abatement and bringing the legal heirs on record, who are necessary parties having interest in the property as they are legal heirs.

7. Learned counsel for the respondents objected the present application on the ground that there is inordinate delay and there is no sufficient cause shown in the application.

8. It is a fact that respondent No.1 (4) expired during pendency of proceeding before the first appellate court, however, no steps were taken by the appellants therein before the first appellate court and

the present applicants were not knowing about death of the said party till it was brought to their notice in July, 2019. This fact is sufficient to condone the delay, to set aside the abatement order and to allow the application for bringing legal heirs on record. Hence, the following order:-

O R D E R

- I. Civil application stands allowed.
- II. The delay of 1212 days caused in bringing legal heirs of respondent No.1 (4) as mentioned in para 3 of the present application is condoned.
- III. The abatement is set aside and the applicants are permitted to amend the title clause of second appeal by bringing legal heirs of deceased respondent No.1 (4) on record.
- IV. Amendment to be carried out within two weeks from today and only thereafter fresh notices be issued to newly added respondents in the second appeal.
- V. The appellants to furnish memo of appeal to the newly added respondents i.e. legal heirs.
- VI. Civil application stands disposed of accordingly.

(BHARAT P. DESHPANDE, J.)