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

**906 CIVIL APPLICATION NO.13659 OF 2019
IN
SECOND APPEAL NO.784 OF 2003**

Dnyanoba Pandhari Surwase (Died)
LRs. Gayabai Dnyanoba Surwase and Others .. Applicants

Versus

Narayan Dnyanoba Surwase and Others .. Respondents
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Advocate for Applicants : Mr. Anand D. Kawre
Advocate for Respondents : Mr. N.P. Patil Jamalpurkar
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CORAM : MANGESH S. PATIL, J.

DATE : 18-02-2022

PER COURT :

. The sole applicant - appellant by name Dnyanoba having died, but the steps to bring on record his legal heirs having never been taken, by the order dated 26-07-2019 the Second Appeal was dismissed as abated. By way of this application, his legal heirs are now seeking to set aside the abatement and to come on record, however, there being a delay of 675 days a request for it to be condoned is also made.

2. The learned advocate for the proposed legal heirs would

submit that the appeal was admitted long back and the client having not informed him about the death of the sole appellant. He would further submit that the respondent is also one of the sons of the deceased appellant and even he could have taken appropriate steps or at least informed his counter part. All these have resulted in causing the delay, which may be condoned and abatement may be set aside.

3. Learned advocate Mr. Patil for the respondents strongly opposes the application. He would submit that it was a suit for perpetual injunction. If the legal heirs have any independent right, they may prosecute it. It was a personal right which the deceased was seeking to enforce. The legal heirs may not have any legitimate right to continue with the litigation.

4. Mr. Patil would further submit that the delay is inordinate and deliberate and may not be condoned.

5. Without going into the merits of the matter, suffice it for the purpose to bear in mind that the Second Appeal is of the year 2003. It was admitted long back. The parties obviously may have been waiting for the final hearing. The parameters for request for

bringing on record the legal heirs in such matters would be different than the ordinary request where the matters are still to be admitted.

6. It would be always appropriate to allow the matters to be decided on merits rather than by default. Any hardship that has been caused to the respondents can be remedied by imposing some cost.

7. Considering the grounds mentioned in the application and all the aforementioned facts and circumstances, the delay does not appear to be inordinate or deliberate.

8. The application is allowed subject to the proposed legal heirs depositing an amount of Rs.5000/- (Rs.Five Thousand Only) in this Court, within a period of four weeks. The respondents shall be entitled to withdraw it.

. The appeal be restored if the cost is deposited in time.

(MANGESH S. PATIL)
JUDGE

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