

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.10254 OF 2012
IN SA/387/2008 WITH CA/10253/2012 IN SA/387/2008

BHAGWANT GANPATRAO PATIL
VERSUS
NIVRUTTI MUKUNDRAO KARHAD L.RS. DNYANOBA NIVRUTTI
KARAHAD AND ANR

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Advocate for Applicant : Mr. S V Kulkarni
Advocate for Respondent No. 2 : Mr. A. N. Sabnis

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CORAM : R.M. JOSHI, J

DATE : APRIL 27, 2023

PER COURT :

1. These applications are filed for condonation of delay of 4385 days in bringing LR's of deceased Respondent No. 2 on record and for restoration of second appeal.

2. Contesting Respondent No. 1/1 has not filed say to these applications, which indicates that this Respondent is not interested in contesting the application and opposing the relief sought. Counsel for the LR's of Respondent No. 2 has no objection for grant of application.

3. Applications show that the Respondent No. 2 died during the pendency of first appeal and an application was filed to bring LR's of this Respondent

on record, however, no order seems to have been passed by the First Appellate Court. After filing of the present appeal it was revealed that the Respondent No. 2 is dead and her LR's are not brought on record and consequently, the entire appeal was dismissed.

4. It is contended in the application that due to lack of knowledge the LR's of deceased Respondent No. 2 were not brought on record. It is also contended that the Appellants are residing in a village and for poor financial condition could not collect the documents for approaching this Court. The applicants, therefore, have shown cause and explanation for not bringing the LR's of deceased Respondent NO. 2 on record. In absence of any opposition to the same by the contesting Respondents, this Court finds no reason for not allowing the application.

5. As far as dismissal of appeal is concerned, in view of order of abetment against Respondent No. 2, entire appeal was dismissed. In view order bringing LR's of deceased Respondent No. 2 on record, the appeal deserves to be restored.

6. Hence, both civil applications are allowed in terms of prayer clauses 'B' & 'C' in CA/10254/2012 and 'B' & 'C' in CA/10253/2012 subject to cost of Rs. 2,000/- payable to the contesting Respondents. The cost be paid or deposited in the Court within a period of six weeks. If cost is not paid or deposited in time, this order shall stand vacated without further reference too the Court. In case, cost is paid/deposited in time, appeal be registered at stage of its dismissal.

(R.M. JOSHI, J.)

Malani