



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 5360 OF 2023
IN
SECOND APPEAL NO. 872 OF 2009

SHARYU MURLIDHAR NEMADE AND OTHERS
VERSUS
CHHABILDAS TUKARAM KHADAKE AND OTHERS

Advocate for Applicants : Mr. G. S. Rane;
Advocate for Respondent No.1 : Mr. L. V. Sangit;
Advocate for Respondents No.6A to 6D, 7A to 7C : Mr. S. H. Tripathi

CORAM : S. G. MEHARE, J.

DATE : 14-12-2023

PER COURT :-

1. Heard the learned counsel for the applicants and the learned counsel for respondent No.1 and the learned counsel for respondents No.6(a) to 6(d) and 7(a) to 7(c). Respondents No.4(a)(b)(c)(d) were served, but they did not appear; Hence, proceeded *ex-parte*.
2. This is an application for condonation of delay for setting aside abatement and bringing legal representative/s of respondent No.4 on record.
3. Learned counsel for the applicants submits that the learned counsel representing respondent No.4 did not supply necessary papers about death of respondent No.4. Respondent No.4 died at Pimpri Chinchwad. His native was in Jalgaon district. Hence, it

was difficult for the applicants/appellants to find out his legal heirs. However, after getting knowledge, the application was immediately filed. There is no deliberate delay in filing the application for bringing legal representatives and setting aside abatement of respondent No.4.

4. Learned counsel for the appearing respondents as mentioned above, have opposed the application. They submit that the reasons for delay appear not plausible.

5. Perused the application.

6. The reasons for delay appear plausible. No harm would be caused to the other side if the prayers are allowed. Hence, the order:-

- i) Civil application is allowed.
- ii) Delay for setting aside abatement and bringing legal representative/s of respondent No.4 stands condoned.
- iii) The legal representative/s of respondent No.4 be brought on record.
- iv) Necessary amendment be made.
- v) After the amendment is carried out, issue notice to the legal representative/s of respondent No.4, returnable on 09.02.2024.

**(S. G. MEHARE)
JUDGE**