

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

1 CIVIL APPLICATION NO.7140 OF 2023
IN SA/373/2017

ASHRU EKNATH DHAVAN DIED THR. LRS BHAMABAI ASHRU DHAVAN AND
OTHERS
VERSUS
AMBAR JAYRAM KAPSE AND OTHERS

...
Advocate for Applicants : Mr. D. P. Palodkar
Advocate for Respondents 1, 2, 4 & 5 : Mr. Sanket S. Kulkarni
Advocate for respondent 3 : M.B. Karande

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CORAM : ARUN R. PEDNEKER, J.
DATED : 14/06/2023

PER COURT :

1. Civil Application is moved to bring the legal heirs of the appellant by condoning the delay.
2. Mr. D.P. Palodkar, learned counsel for the appellant submits that during the second covid wave, the appellant passed away and that legal heirs were not brought on the record as they were not aware of the pending litigation and as such, the application was not moved for bringing the legal heirs of appellant on record. The learned counsel further submits that the appeal was dismissed as abated and thereafter execution proceedings were taken by respondents. The learned counsel submits that notice of execution proceedings was received and thereafter, they came to know about the present proceedings. Thereafter, applicants contacted the lawyer and filed the present application.
3. Mr. Sanket Kulkarni, learned counsel for the respondents submits that this petition was earlier dismissed for non compliance of the orders of this Court and that this would be the second dismissal on account of the abatement and appellants are not prosecuting the proceedings diligently.

He submits that in the event the matter is restored, the applicants also be put to costs.

4. In the interest of justice, the application is allowed. Delay is condoned, by imposing cost of Rs.10,000/- (Rupees ten thousand) to be paid to the respondents within two weeks. The legal heirs of the appellant are permitted to be brought on record. Abatement, if any, is set aside. Application is allowed and disposed of.

5. Appellants are put to notice that the appeal needs to be diligently prosecuted and that the matter as and when listed be proceeded further. In the event, it is not proceeded as contended by the respondents, the same would be liable for dismissal for non prosecution.

5. Status-quo as on today be maintained in respect of the properties in question till the decision of the appeal. List the appeal for final hearing board commencing from 3.7.2023.

6. Parties to act on authenticated copy of this order.

[ARUN R. PEDNEKER J.]

ssc/