

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.10722 OF 2019
IN SA/450/1992

NAREAYAN RAMRAO BHAGWAT (DIED) LRS. NARAYAN RAMRAO
BHAGWAT AND OTHERS

VERSUS

MANGILAL BHAURAO MOHITE (DIED) LRS. RAMESH AND OTHERS

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Mr. P. P. Mandlik, Advocate for the Applicants.

Mr. A. P. Bhandari, Advocate for the Respondents.

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CORAM : R.M. JOSHI, J

DATE : MARCH 20, 2023

PER COURT :

1. This Application is filed for condonation of delay caused in restoration of Second Appeal.

2. It is the contention of the Applicants that in February, 2019 they came to know about the death of sole Respondent and thereafter for want of instructions the LR's of deceased could not be taken on record, which resulted into the dismissal of the Appeal. He further contends that the delay is not deliberate.

3. Learned Counsel for the LR's of Respondent opposed the Application with the contention that the balief report is dated 01.08.2017, which indicates the knowledge of the Applicants about the death of

Respondent at least since that day. He, therefore, contends that this is not fit case to condone the delay.

4. It is settled position of law that the *lis* is to be decided between the parties on merits instead of dismissal on technicalities. No malafides are seen by this Court in not bringing of LR's of deceased on record in time. It would be in the interest of the parties that the Appeal is decided on merits.

5. In the result, the Application is allowed in terms of prayer clause 'A. 1 to 3' subject to payment of cost of Rs. 4,000/- to be paid to LR's of deceased Respondent within one week. In failure thereof, this order stands recalled without further reference of this Court. Three weeks time is granted to carryout the amendment. Learned Counsel for LR's of deceased Respondent waives notice for final hearing of Appeal.

(R.M. JOSHI, J.)

Malani