

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

46 WRIT PETITION NO.9692 OF 2014

PRAMOD DODHU BAVISKAR

VERSUS

PRAKASH NARHARI LAGADKAR,  
L.RS. SUMAN AND ANOTHER

...  
Advocate for Petitioner : Mr. Kedar Balbhim R.

...

**CORAM : SHAILESH P. BRAHME, J.**

**DATE : 28<sup>th</sup> NOVEMBER, 2023**

**PER COURT :**

1. Heard learned counsel for the petitioner.
2. Though the respondents are served, none appears for them.
3. This Writ Petition is directed against the distinct orders dated 30<sup>th</sup> July, 2014, passed below Exhibit 1, 20 and 22 of RCS No. 103 of 2012, by learned Joint Civil Judge, Junior Division, Bhusawal.
4. The petitioner is the original plaintiff who has filed suit for recovery of amount against deceased respondent. Respondent died on 24<sup>th</sup> May, 2012. The petitioner submitted application Exhibit 20 and 22 on 30<sup>th</sup> September, 2013, for condonation of delay, setting aside abatement and bringing heirs on record. Both the applications were rejected by the impugned orders.

5. Learned counsel for the petitioner submits that learned Judge has committed an error of jurisdiction in rejecting the applications. Learned Judge has adopted hyper technical approach. There is no reason for the petitioner for not taking steps within stipulated period against the deceased respondent. Learned counsel relies upon the Order XXII Rule 10-A of the Code of Civil Procedure, to submit that Pleader for deceased respondent failed to discharge the duties.

6. I have gone through the impugned orders which are below Exhibit 1, 20 and 22. The petitioner is prosecuting suit for recovery of amount. There is no reason surfacing why the petitioner should not take steps to bring on record heirs of the deceased respondent. It is incomprehensible how the petitioner would be benefited by causing delay deliberately in bringing heirs of the deceased respondent on record. Learned Trial Judge has lost sight of this significant aspect of the matter. Learned Judge has committed error of jurisdiction.

7. It is the statutory duty of a Pleader under Order XXII Rule 10-A of CPC, to bring to the notice of the Court the death of the respondent. There is nothing on record that the said compliance has been made by the Lawyer. In the absence of statutory compliance the knowledge of death which is stated by the petitioner has to be accepted.

8. I do not approve the finding that the delay is for the false reasons. The application for the condonation of delay spells out the

reasons which are accepted. It is the trite law that the approach of the Courts of law is to decide the matter on merits when pitted with technicalities. I find that impugned orders are unsustainable. I, therefore, pass following Order :

**ORDER**

- i. Orders dated 30<sup>th</sup> July, 2014 passed below Exhibit 1, 20 and 22 in RCS No. 103 of 2012, by learned Joint Civil Judge Junior Division, Bhusawal, are quashed and set aside.
- ii. The delay for setting aside abatement and bringing heirs of the respondent on record is condoned.
- iii. The petitioner shall take steps to bring heirs of deceased respondent on record by carrying out amendment within two weeks and the suit shall be proceeded with.
- iv. The Writ Petition is allowed in above terms.

**[ SHAILESH P. BRAHME, J. ]**