

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

**CIVIL APPLICATION NO. 17186 OF 2022
IN SECOND APPEAL NO. 198 OF 2003**

**EJAJ AKHTAR ABDUL DIED LRS. NUSRAT PARVEEN EJAJ AKHTAR
QURESHI AND ORS.**

VERSUS

**SHAIKH MEHMOOD SK MAHBOOB DIED LRS. SMT. HAMIDABEE
SK. MAHEMOOD AND ORS.**

Mr. C. K. Shinde, Advocate for the applicants

Mr. P. V. Barde, Advocate for respondent Nos. 1-a to 1-e.

CORAM : R. M. JOSHI, J.

DATE : 23rd MARCH, 2023

PER COURT :-

1. This application is filed by the legal representatives of deceased respondent No.4B to bring themselves on record after condonation of delay of 447 days in preferring the application. Original appellant/respondent No.2 in this application filed affidavit-in-reply stating that there was no intimation to him with regard to the death of deceased respondent No.4B. It is further stated that he is not aware about the legal representatives of the deceased. Therefore, according to him an enquiry under Order XXII Rule 5 of the Code of Civil Procedure is necessary.

2. It is responsibility of the appellant to bring LR's of deceased party on record. However that does not preclude the LR's of deceased

respondent to bring themselves on record by moving such application. As far as the enquiry sought by the applicant about the determination of question as to legal representatives, there is no dispute made by any of the parties about the present applicant being legal representatives of deceased respondent No.4B. Thus, no enquiry is necessary as contemplated by Order XXII Rule 5 of CPC.

3. It is further contended that the other respondents are not joined as a party to this application. Since it is a responsibility of the applicant to bring LR's of deceased person on record, non joining of all other respondents by the legal representative who are not the party to the proceedings, cannot be faulted with. No prejudice will cause to the other respondents, if the LR's of the deceased are brought on record.

4. Perusal of the reply filed by the applicant/respondent No.2 herein shows that he does not contest the reason for the delay. For the reasons mentioned in the application, this Court is of the view that no malafide can be attributed to the applicants for not making an application within time to bring themselves on record. Hence application stands allowed in terms of prayer clauses 'B' and 'C'. Applicant is directed to carry out necessary amendment.

(R. M. JOSHI, J.)

ssp