

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

WRIT PETITION NO. 14730 OF 2023

VIJAYKUMAR BHAURAO WADKAR SINCE DIED THROUGH LRS AARTI
VIJAYKUMAR WADKAR AND OTHERS
VERSUS
BAPURAO DNYANOBA DUDILE

...

Advocate for Petitioners : Mr. A.A. Joshi h/f Mr. Natu Sharad V.

...

CORAM : SHAILESH P BRAHME, J.

DATE : 4th DECEMBER 2023.

Per Court :

. Heard the learned Counsel for the petitioners.

1. The petitioners are questioning the common order dated 19.04.2023, passed below Exhibit 52 & 53 in R.C.S. No.423/2018, condoning delay and permitting the plaintiffs to bring heirs of deceased defendants on record.

2. The petitioner is the defendants and the respondent is the plaintiff in a suit for perpetual injunction. The sole defendant/petitioner died on 17.10.2021. The death is duly informed by the learned Counsel for the petitioners by presenting pursis at page no.45. The respondent submitted application at Exhibit-52 for condonation of delay of ten months on 18.11.2022. A separate application at Exhibit-53 is submitted for bringing legal heirs on record on the same date. By the impugned

order, both the applications are allowed which is questioned by the petitioner in this petition.

3. The learned Counsel for the petitioners submits that there is no prayer for setting aside abatement in application at Exhibit-53. The learned Judge committed error of jurisdiction in entertaining applications. Without extending opportunity of hearing, the applications are allowed. The learned Judge erred in holding that there is delay of 10 days only.

4. Application at Exhibit-53 does not reflect a prayer for setting aside abatement. Application at Exhibit-52 is for condonation of delay. The Court is expected to adopt pragmatic and justice oriented approach in the matters of bringing heirs on record. The purport of the procedure is to facilitate adjudication on merits. Abatement due to the death of the party is a legal fiction. The submissions of learned Counsel for the petitioners are technical in nature. Normally a party seeking substitution of the legal heirs is expected to pray for setting aside abatement. However for the absence of the said prayer, the application cannot be rejected.

5. I do not find any grave error of procedure and jurisdiction in impugned order. There is no merit in the petition. The writ petition is dismissed.

[SHAILESH P. BRAHME, J.]