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IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO.168/2020
IN
SECOND APPEAL NO.23 OF 2013

NIRMALABAI SHIVAJIRAO
DESSAI (DEC) REP. BY LRS.
AND 10 ORS. ... APPLICANTS

Versus

VITORINO RODRIGUES
AND 5 ORS. ... RESPONDENTS

Mr Ravi Anand, Advocate *for the Applicants.*
Ms S. Khadilkar, Advocate *for the LRs of Respondent No.1.*

CORAM: M. S. SONAK, J.

DATED: 21st April 2023

P.C.:

1. Heard Mr Anand for the applicants and Ms Khadilkar for the legal representatives of respondent no.1.
2. By this application the applicants seek leave to bring on record the legal representatives of deceased respondent no.1 after setting aside abatement if any. The application also prays for

condonation of delay in applying for setting aside of abatement and bringing on record the legal representatives.

3. The applicants have stated on oath that they were unaware of the death of respondent no.1 until 03.11.2018. There is explanation in paragraphs 3, 4 and 5 about the steps taken by the applicants with regard to filing the present application and some time was spent in coordinating with the advocate and obtaining the death certificate and details of the legal representatives. Based on all this, it is submitted that there is a delay of about 125 days. From the date of death and after excluding the 90 days period provided under the Limitation Act, there is delay of about 59 days.

4. Ms Khadilkar, learned counsel appearing for the legal representatives of deceased respondent no.1 however points out that obituaries were published in at least two newspapers and therefore, the statement about the applicants being unaware about respondent no.1's death should not be believed. She relies on the affidavit of Mrs Rifka Rodrigues, one of the legal representatives of respondent no.1. Ms Khadilkar contends that even the calculations of the delay are incorrect. According to her there is delay of 115 days. Without prejudice she submits that even the delay of 59 days is not adequately explained.

5. Upon considering the affidavit of Mrs Rifka Rodrigues and the submissions of Ms Khadilkar, no case is made out not to condone the delay or set aside the abatement if any. Sufficient cause is shown. The delay is not inordinate and the delay is adequately explained. It is not in all cases that obituaries in the newspapers are noticed.

6. For all the above reasons the civil application is allowed. The delay is condoned. Abatement if any is set aside. Leave is granted to bring on record the legal representatives of deceased respondent no.1.

7. Mr Anand states that necessary amendment to the cause title will be carried out within two weeks from today.

8. Misc. Civil application No.168/2020 is disposed of.

M. S. SONAK, J.

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