

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2994 OF 2008
IN / WITH
FIRST APPEAL NO. 1031 OF 2001

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Umashankar Maniklal

...Applicant/
Appellant

Versus

Smt. Nanibai Moti @ Nanibai P. Patel (since
deceased) 1(a) Smt. Kalawati Babubhai Patel And
Others.

...Respondents

Mr. Sameer R. Bhalekar Advocate for Applicant/Appellant.

Mr. Santosh Parad, Advocate for Respondent No. 2/MCGM.

CORAM : M.M. SATHAYE, J.

DATE : 18th DECEMBER, 2023

P.C. :

1. Learned Counsel for the Applicant / Appellant. At the outset, he seeks leave to amend and include the legal heirs of sole Applicant in this Application, who are already brought on record in the main Appeal. He further seeks leave to amend the numbering of first two prayer clauses as (a) & (b). Leave granted, necessary amendment to be carried out within 3 weeks from today.

2. Heard learned Counsel for the Applicants and learned Counsel for the Respondent No. 2/MCGM. Nobody appears for the proposed legal heirs of deceased Respondent No. 1. The causelist

shows that Respondent No. 1-C served and Respondent No. 1-A and Respondent No. 1-B are also served as per Affidavit-of-service.

3. The above Application is filed for bringing legal heirs of Respondent No. 1 on record, in which there is delay of 3 years and 227 days as per office note. Affidavit-of-service is filed way back in October-2008. Despite that no reply is filed by the proposed legal heirs till today.

4. Inviting this Court's attention to para 3 of the Application, it is submitted that after admission of appeal, the original Applicant was informed by his Advocate that he would be informed as and when the matter is listed for final hearing. It is submitted that he was making regular inquiries with his Advocate. It is submitted that in the last week of April-2008 when he went to meet his advocate, during course of discussion the death of Respondent No. 1 was informed by him. At that time he was advised that Application is necessary to be filed for bringing legal heirs on record. The original Applicant is stated to be an old man who has already expired and his legal heirs are already brought on record in the main Appeal.

5. In view of the un-controverted averments as narrated above, sufficient cause is made out. Civil Application is allowed in terms of prayer clause (a) to (c). Delay is condoned. Abatement of Appeal *vis-a-vis* Respondent No 1 is set aside. The Applicants are permitted to bring Respondent No. 1-A to 1-C on record as legal heirs and representatives of deceased Respondent No. 1.

6. Civil Application is disposed of. No order as to costs.
7. Since this is an old appeal of 2001, place the First Appeal on 15.01.2024 for directions.
8. All concerned to act on authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)