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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 143 OF 2017
WITH
CIVIL APPLICATION NO. 144 OF 2017
WITH
CIVIL APPLICATION NO. 145 OF 2017
WITH
CIVIL APPLICATION NO. 146 OF 2017
WITH
INTERIM APPLICATION NO. 2030 OF 2019
WITH
INTERIM APPLICATION NO. 2031 OF 2019
WITH
INTERIM APPLICATION NO. 2032 OF 2019
IN
SECOND APPEAL NO. 400 OF 1989

Shri Anna Alias Anadrao ... Applicants

since deceased through LRS

Vs.

Vithoba Maruti Lokhande ... Respondents

since deceased through LRS

Mr. Kalpesh Patil for the Applicants.

Mr. Dilip Bodake a/w. Ms. Shraddha Pawar for Respondent Nos. 1A
and 1B.

CORAM : GAURI GODSE, J.

DATE : 22nd JANUARY 2025

ORDER :

Civil Application No. 143 of 2017

1. This application is filed after eighteen years to recall order dated 10th February 2009. By the said order the appeal was

dismissed as abated as the sole respondent had expired. The order dated 10th February 2009 reads as under :

Heard Mr. Bodake for the Respondent. The legal heirs of the Respondent have not been brought on record. The sole Respondent expired and there is nothing to that effect on 10th March 2004. The legal heirs of the sole Respondent have not been brought on record. The Appeal therefore, stands abated.

2. Learned counsel for the applicants submits that after the applicants learnt about the execution proceedings, they approached their Advocate. He submits that papers in the office of the Advocate were misplaced. Hence, according to the applicants they approached a new Advocate and as per advise of the new Advocate, they obtained certified copies from the trial court. He submits that since the papers of the second appeal were destroyed, the applicants were required to obtain certified copies from the trial court.

3. Learned counsel for the applicants relies upon medical papers of applicant no. 4 to support the applicants' contention that since applicant no. 4 was unwell he was unable to take steps.

4. The Order dated 10th February 2009 records that the noting

regarding death of sole respondent available on record is dated 10th March 2004. A perusal of the order dated 10th February 2009 indicates that death of the sole respondent was made aware to the applicants on 10th March 2004. The present application is bereft of any averment regarding the intimation of death of the sole respondent as on 10th March 2004. The sole respondent expired on 21st November 1998.

5. The application for recalling order dated 10th February 2009 is filed in the year 2017. The applicants do not dispute about the knowledge of death of sole respondent. However, a vague averment is made that in December 2016 the applicant learnt about the procedure to take steps. There is no explanation in the application regarding not taking any steps since the date of death of respondent i.e. 21st November 1998 or at least from 10th March 2004 i.e. when the death of the sole respondent was pointed out in this court.

6. For want of any sufficient explanation for condonation of delay of eighteen years, I do not see any reason to condone the delay and set aside abatement.

7. Application is therefore dismissed.

8. In view of dismissal of the application, all pending civil applications and interim applications are disposed of as infructuous.

[GAURI GODSE, J.]