

MHAM160003312017



**Common Order passed below Exh.- 36 & 50 in
Succ C. No. 57/2017, Uddhav Vs. Kamlabai & Ors.**

1. The applicant filed two applications namely an application to bring legal representatives of deceased respondent No.3 Ramesh Pralhadrao Thakare on record and delay condonation application.
2. Both applications are inter-connected with each other. Therefore, I proceed to adjudicate these applications together.
3. The respondents and proposed respondents failed to file their say despite of sufficient opportunities. Therefore, matter be proceeded without say of the respondents and proposed respondents.
4. Ld. Adv. P. M. Thakare for applicant submitted that the applicant filed main application for issuance of heir-ship certificate. During progression of present matter, the respondent No.3 Ramesh Pralhadrao Thakare was died on 11/01/2019. He is survived by the proposed respondents. Proposed respondents are legal heirs of deceased respondent

No.3 Ramesh Pralhadrao Thakare. Therefore, the applicant wants to add them as a respondents in present matter. Hence, their presence is required in present matter. With this, he prayed to add proposed respondents in present matter.

5. Ld. Adv. P. M. Thakare further submitted that the applicant filed an application to bring legal representatives on record on 20/01/2021. The applicant was not in contact with the advocate due to Corona virus. Therefore, there is delay of 01 years, 09 Months and 09 days is caused. However, said delay is not intentional one. With this, he prayed to condone delay. Moreover, he submitted that the respondents will not be prejudiced if present applications are allowed. However, if present applications are rejected then the applicant will suffer irreparable loss. With this, he prayed to allow the both applications.
6. The respondents and proposed respondents failed to argue on both applications despite of sufficient opportunities. Therefore, matter be proceeded without their argument.
7. Perused the applications. Heard Ld. Adv. P. M. Thakare at length. I have gone through record of present matter.
8. It appears that the applicant moved main application for issuance of heir-ship certificate. According to the applicant,

respondent No.3 Ramesh Pralhadrao Thakare was expired on 11/01/2019. In support of this submission, the applicant annexed death certificate of respondent No.3 Ramesh Pralhadrao Thakare on record. Perusal of said death certificate reveals that the respondent No.3 Ramesh Pralhadrao Thakare was died on 11/01/2019. Thus, it seems that respondent No.3 Ramesh Pralhadrao Thakare was died on 11/01/2019.

9. It is sound fact that the applicant ought to have file an application to bring legal representatives of deceased respondent No.3 Ramesh on record within 90 days from death date of deceased respondent No.3 Ramesh. However, the applicant moved application (Exh.36) on 20/01/2021. In suo moto Writ Petition No.3/2020, the Hon'ble Apex Court condoned delay since 15/03/2020 to 28/02/2022. Thus, the applicant is entitled for the benefit of said period. Thus, there is delay of 11 Months and 04 days. On the point of delay, the applicant submitted that he was not in contact with his advocate due to lock-down. Hence, delay is caused. The respondents and proposed respondents did not file their say to dispute said reason. Hence, I am of the opinion that the applicant sufficiently explained delay. Moreover, if, present application is allowed no prejudice will be caused to the respondents. However, if present application is rejected then the applicant may be prejudiced. The inconvenience

suffered by the respondents can be compensated in terms of money. Therefore, I am of the opinion that delay of 11 months and 04 days needs to be condoned.

10. Admittedly, respondent No.3 Ramesh was party to present matter. Therefore, his legal representatives should be on record for effective adjudication of present matter. Proposed respondents are widow, son and daughters of deceased respondent No.3 Ramesh. Therefore, they are necessary parties in present matter. Therefore, their presence is required for effective adjudication of present matter. Thus, permission needs to be granted to bring legal representatives of deceased respondent No.3 Ramesh on record. Moreover, the applicant is directed to add names of proposed respondents in main application and carry out necessary amendment.

11. In view of aforesaid discussion, I am of the opinion that both applications should be allowed. As there is delay of 11 months and 04 days, therefore, I am of the opinion Rs.700/- be imposed on the applicant while allowing both applications. Hence, I pass following order :-

Order

- 1 Both applications (Exh.36 & 50) are allowed subject to costs of Rs.700/- (Rs. Seven hundred)

(5)

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payable to the proposed respondents on or before next date.

- 2 The applicant is permitted to bring legal representatives of deceased respondent No.3 Ramesh on record on or before next date.
- 3 The applicant is directed to add Chhaya Ramesh Thakare, Tushar Ramesh Thakare, Vaishalai Pravin Bodade and Mayuri Ashwin Harne as proposed respondents on or before next date.
- 4 The applicant is directed to carry out necessary correction in main application within stipulated time and file the same on record and to provide it to respondents.
- 5 After aforesaid compliance, issue notices to Chhaya Ramesh Thakare, Tushar Ramesh Thakare, Vaishalai Pravin Bodade and Mayuri Ashwin Harne after filing process.

Date:- 21/12/2023

Sd/-

Place:- Nandgaon Kh. (Satishkumar Shripatrao Gaikwad)
Civil Judge Jr. Div.,
Nandgaon Khandeshwar,
Distt. Amravati.