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RCA No.22/2016
Smt. Saroj Ramgopal Kiyal & others
V/s.
Nandkishor Indarmal Murarka & others

MHBU040002802016



Order Below Exh.9
(Passed on 30.11.2023)

1. This application is filed by the appellant to condone the delay of 40 days to bring the legal representative of deceased respondent No.1 Nandkishor Indarmal Murarka on record , who died on 2.10.2020.
2. Respondents have resisted application by filing reply at Exh.11. It is contended that respondent No.1 died on 2.10.2020. It was necessary to bring on record his legal representative before 31.12.2020. But appellant has filed present application on 22.2.2021. Thus, there is a delay of 53 days and the reason mentioned in the application are not proper and satisfactory. Hence, requested to reject the application. In the alternative it is submitted that if Court comes to the conclusion to condone the delay, then by imposing cost the application may be allowed.
3. Mr. PR.Joshi advocate for appellants has submitted that due to COVID 19 pandemic situation, the appellants could not contact their advocate. Therefore, there is delay in filing the application.

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4. On the other hand, Mr. S.V.Agrawal advocate for the respondents has submitted that the say filed by the respondents may be considered as argument.

5. Perused the application supported by affidavit as well as reply filed by the respondents vide Exh.11. I have considered the submissions of both side. Gone through the record and proceeding.

6. The record shows that being aggrieved and dissatisfied with the judgment and decree dated 25.2.2016 passed by the Jt.Civil Judge Jr. Division Shegaon, in Reg.C.S. No.35/1992, the appellants have preferred this appeal. During pendency of appeal, respondent No.1 Nandkishor Indarmal Murarka died on 2.10.2020. It was necessary for the applicant to bring legal representative of deceased respondent within 90 days from 2.10.2020. Admittedly when respondent No.1 died at that time COVID 19 pandemic situation was going on. As per order of the Hon'ble Supreme Court of India in Misc. Application No.21/2022, in Misc. Application No.665/2021 in Suo-motu Writ Petition (c) 3/2020 it is clarified that the period of limitation for any suit, appeal, application or proceeding , the period from 15/03/2020 till 28/02/2022 shall stand excluded for the purposes of limitation and in cases where the limitation would have expired during the period between 15/03/2020 to 28/02/2022, notwithstanding the actual balance period of limitation remaining ,all persons shall have limitation period of 90 days from

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01/03/2022. Thus, the limitation period from 02/10/2020 to 19/07/2021 has to be excluded. Considering above aspect it cannot be said that there is delay in filing the application to bring legal representative of respondent No.1 on record. Hence, application deserves to be allowed. In result, I pass following order :-

ORDER

- 1] Application Exh.9 is hereby allowed as prayed.
- 2] The delay if any is condoned.

Sd/-

Dt.30/11/2023

((G.B.Jadhav)
District Judge-1, Khamgaon,
Dist. Buldhana.

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Certificate

I affirm that the contents of this P.D.F. file order are same word for word as per original order.

Name of Steno : Mrs.Nishat Anjum Mohd.Rafique.

Name of Court : District Judge – 1, Khamgaon, Dist. Buldana.