

**Reg.. Civil Appeal. NO. 40/2019**

(MHBU200007752019)

Lilawati Saubhage

Versus

Baliram Kharat

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**COMMON ORDER BELOW EXH.41 & 42**

(Passed on this 2<sup>nd</sup> August,2023)

These are the applications to condone delay in bringing legal representatives of deceased respondent No. 1-E Parwatabai Namdeo Kharat on record (Exh.41) and to bring legal representatives of deceased respondent No. 1-E on record ( Exh.42).

2. According to applicants/appellants, against the order passed below Exh.16 & 17, they approached before Hon'ble High Court. In the proceeding before Hon'ble High Court, respondents submitted that, respondent No.1-E died, till then applicants/appellants were unaware about the death of respondent No.1-E. As the appellants are residing at different places, they were unknown about the death of respondent No.1-E. Therefore, delay occurred in bringing the legal heirs of respondent No.1-E on record. If the delay is not condoned, the appellants/appellants will suffer irreparable loss. Hence, prayed to condone the delay and permit to bring the legal representatives of deceased respondent No. 1-E on record.

3. Respondents filed say and opposed the application merely contending that names of all the legal representatives are not mentioned in the application. Here it is to be noted that, though respondent objecting on ground that, names of all legal heirs of deceased are not mentioned, but respondents does not mentioned as to whose names are not mentioned in the application. Therefore, the objection to that effect is not tenable.

4. The death of respondent No.1-E is not in dispute. Judgment and decree passed by learned trial court shows that, dispute in between the parties is in respect of immovable property. Thereby, right to sue survives.

5. Further, application to condone the delay and to bring legal representatives of deceased respondent No. 1-E on record are filed on affidavit. The reasons mentioned in the application appears to be genuine one. There is no reason to disbelieve the contention of the applicants/appellants.

6. In view of above discussion, I am of the view that, applicants/appellants had shown sufficient cause to condone the delay. Further looking to the nature of dispute, I am of the view that, it is better to decide the appeal on its own merit and it will not cause any prejudice to the respondents. Under such circumstances, both the applications Exh.41 & 42 deserves to be

allowed. Hence, I pass the following order.

**ORDER**

1. Applications Exh. 41 and 42 are hereby allowed.
2. Delay caused in bringing the legal representatives of deceased respondent No.1-E Parwatabai Namdeo Kharat on record is hereby condoned.
3. Applicants/appellants are permitted to bring names of legal representatives of deceased respondent No.1-E Parwatabai Namdeo Kharat on record.
4. Applicants/appellants shall bring names of legal representatives of deceased deceased respondent No.1-E Parwatabai Namdeo Kharat on record on or before next date and submit amended copy of appeal memo on record.

Dt.02-08-2023

**(S.M.Chandgade),**  
District Judge – 1, Mehkar,  
District Buldana