



:: Order Below Exh.15 in Civil
M.A.No.38/2021 ::

1. Application at Exh.15 is filed for taking legal heirs of deceased Respondent No.2 Vishnu Ranu Sawant on record.
2. Say of other side was called upon. Say is filed at Exh.14. Application is strongly objected.
3. Heard.
4. Perused record. Points for determination along with my findings thereon are as follows.

Sr. No.	Points	Findings
1	Whether proposed legal heirs of deceased Respondent No.2 are requisite for determining real controversy between the parties?	Yes.
2	Whether delay should be condoned?	Yes.
3	Whether abatement should be set aside?	Yes.
4	What Order?	Application is allowed.

:: REASONS ::

As To Point No.1 to 3

5. As per Applicant, Respondent No.2 Vishnu Ranu Sawant has died on 01/08/2012. In support application, Farukh Shahadat has filed affidavit at exh.16. Death certificate of Respondent



No.2 is filed on record along with exh.21. Death certificate shows that Respondent No.2 has died on 01/08/2012.

6. As per Applicant, Mohan Vishnu Sawant, Shankar Vishnu Sawant, Sanjay Antu Kudekar & Kaluram Antu Kudekar are legal heirs of deceased Respondent No.2. Application is filed on 08/09/2022. As per Limitation Act, application needs to be filed within 90 days. But present application is not filed immediately after death of Respondent No.2 and there is delay. There is no separate application for delay condonation.
7. After death of a party legal heirs should be brought on record in order to decide real controversy between the parties. If this is not done then it may create further litigation which may create multiplicity of proceeding. Appearance of proposed legal heirs is required while deciding legal issues created in the suit.
8. As per Applicant, he did not get information about legal heirs of deceased Respondent No.2, therefore, there is delay to file the application. Reason given by Applicant is accepted as sufficient cause. It would not be proper to reject application for taking legal heirs on record on ground of delay. After death of Respondent No.2, application is automatically abated. Considering facts, delay can be condoned and abatement can be set aside in the interest of justice. For just decision of the case, it would be proper to take legal heirs of deceased Respondent No.2 on record. Considering this aspect, I pass following order.



:: ORDER ::

1. Application is allowed.
2. Applicant is directed to take legal representatives/heirs of deceased Respondent No.2 (more specifically described at Exh.15) on record in cause title of the application within 14 days from passing of this order.
3. Whatever delay is caused in taking legal representatives/heirs on record is condoned subject to cost of Rs.2,000/- (Rupees Two Thousand Only) to be paid to Respondents. If cost is not claimed by Respondents then same be credited in account of District Legal Services Authority, Raigad-Alibag.
4. Abatement of application against Respondent No.2 is set aside.
5. Applicant is directed to file copy of amended application.

Sd/-

Panvel,
Dated :- 11/01/2024

(S. C. Shinde)
District Judge-3, Panvel
Dist.-Raigad