



**:: Order Below Exh.10 in Civil M. A. No.128/2019 ::**

1. Application is filed for taking legal heirs of deceased Respondent No.2, 3 & 8 on record.
2. Say of other side was called upon and only Respondent No.5 & 6 have appeared. Say is not filed therefore, application is proceeded without say.
3. Heard Ld. Advocates for both side.
4. Perused record. Following points arise for my determination and findings thereon with reasonings are given as follows.

Sr. No.	Points	Findings
1	Whether proposed legal heirs of deceased Respondent No.2, 3 & 8 are requisite for determining real controversy between the parties?	Yes.
2	What order?	Application is allowed.

**:: REASONS ::**

**AS TO POINT NO.1**

5. As per Applicant, Respondent No.2 has died on 12/09/2018, Respondent No.3 has died on 19/11/2011 while Respondent No.8 has died on 30/01/2014. To support this application Applicant No.2 has filed affidavit. Photocopies of death certificates of Respondent No.2, 3 & 8 have been filed on record along with exh.21.

6. As per Applicant, Arjun Vithal Mhatre and Ninad Vithal Mhatre are legal heirs of Respondent No.2, Mahendra Ganesh Mhatre and Dharmendra Mhatre are legal heirs of Respondent No.3 whereas Respondent No.8 has no legal heir or representative.
7. Application is filed on 14/02/2018. If period of death of Respondent No.2, 3 & 8 then there is delay for taking their legal heirs on record. Grounds of delay are not mentioned.
8. 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. My Ld. Predecessor by order dt.29/01/2022 has issued notice to legal heirs/proposed Respondent No.1 to 4 and notice was issued to them. Notice is served upon legal heirs of Respondent No.2 & 3 therefore, there is no need to issue notice to them.
9. Applicant has not filed separate application for delay condonation and prayer is made in present application for delay condonation. After death of a party matter abates. Applicant has not filed separate application for setting aside abatement. It would not be proper to reject application for taking legal heirs on record in absence of separate delay condonation application and application for setting aside abatement. Oral prayer can be considered therefore, in the interest of Justice and for just decision of the case it would be

proper to take legal heirs of deceased Respondent No.2 & 3 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 & 3 (more specifically described at exh.10) on record in cause title of the application within 14 days from passing of this order.
3. Whatever delay has caused for taking legal representatives/heirs of deceased Respondent No.2 & 3 on record is condoned subject to depositing cost of Rs.2,000/- (Rupees Two Thousand) to District Legal Services Authority Raigad-Alibag.
4. Automatic abatement of application due to death of Respondent No.2 & 3 is set aside.
5. Applicant is directed to file amended application.

(Application is disposed of accordingly)

Panvel,  
Dated :- 12/04/2023

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