



:: Order Below Exh.36 in Civil
M.A.No.128/2019 ::

1. Application at Exh.36 is filed by Appellant for taking legal heirs of deceased Respondent No.5 Arjun Vitthal Mhatre on record.
2. Say of other side was called upon. Say is not filed therefore, application is proceeded without say.
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.5 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 Appellant, Respondent No. 5 Arjun Vitthal Mhatre has died on 21/11/2022. In support application, Mistry Ikhlq



Attahusain Saifi has filed affidavit at exh.37. Photocopy of death certificate of Respondent No.5 is filed on record along with exh.36. Death certificate shows that Respondent No.5 has died on 21/11/2022. At Exh.34 Respondent No.2A & 3A have filed pursis that Respondent No.5 is dead. This also supports the fact about death of Respondent No.5.

6. As per Appellant, Vaijanti Arjun Mhatre, Ashwini Arjun Mhatre, Bhagyashri Arjun Mhatre, Prabhavati Arjun Mhatre, Tejashri Arjun Mhatre, Dipali Arjun Mhatre & Machhindra Arjun Mhatre are legal heirs of deceased Respondent No.5. Application is filed on 13/10/2023. As per Limitation Act, application needs to be filed within 90 days. But present application is not filed immediately after death of Respondent No.5 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 Appellant, he did not get information of death about Respondent No.5 and death certificate was obtained on 10/10/2023 therefore, there is no delay but this contention of Appellant is not acceptable as the fact as to when he got knowledge about death of Respondent No.5 is not mentioned in the application therefore, there is delay to file the

application. It would not be proper to reject application for taking legal heirs on record on ground of delay. After death of Respondent No.5, application is automatically abated.

9. Considering facts, in the interest of justice delay can be condoned and abatement can be set aside. For just decision of the case, it would be proper to take legal heirs of deceased Respondent No.5 on record. Considering this aspect, I pass following order.

:: ORDER ::

1. Application is allowed.
2. Appellant is directed to take legal representatives/heirs of deceased Respondent No.5 (more specifically described at Exh.36) on record in cause title of the appeal 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.1,000/- (Rupees One Thousand Only) to be credited in account of District Court Panvel. Respondents are entitled for cost.
4. Abatement of appeal against Arjun Vitthal Mhatre is set aside.
5. Appellant is directed to file copy of amended appeal memo.

Panvel,
Dated :- 20/01/2024

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