

**:: Order Below Exh.53 In Regular Civil Appeal**  
**No.314/2019 ::**

1. Application is filed by Applicant for taking legal heirs of deceased Respondent No.2 on record. As per Applicant there are three legal heirs to Respondent No.2 and they are Vinod Arvind Deshmukh, Sagar Arvind Deshmukh and Sarita Arvind Deshmukh.
2. It is contended that Respondent No.2 died on 17/09/2021 and he is survived by these three legal heirs. Applicant has filed separate applications for delay condonation and for setting aside abatement at Exh.55.
3. Say of Respondents was called. Ld. Adv. Mr. R.V Oak for Respondents has objected this application on the ground that first notice be issued to legal representatives as they should be heard on this point.
4. Heard Ld. Advocates for both sides. Perused record. Respondents have not submitted any documents. Ld. Adv. for Applicant/Appellant has submitted that taking legal heirs of deceased Respondent No.2 is necessary for just decision of the case. Proposed legal heirs are concerned in the appeal as deceased Respondent No.2 was party in the suit. Per contra Ld. Adv. for Respondents submitted that without hearing the proposed legal representatives it would not be proper to allow the application. Notices should be issued to them.
5. Following points arise for my determination and findings thereon with reasonings are given as follows.

| Sr. No. | Points                                                                                            | Findings               |
|---------|---------------------------------------------------------------------------------------------------|------------------------|
| 1       | Whether proposed legal heirs are requisite for determining real controversy between the parties ? | Yes.                   |
| 2       | What order ?                                                                                      | Application is allowed |

**:: REASONS ::**

**Point No.1**

6. Death of Respondent No.2 is not disputed by Respondents and it is also not disputed that above mentioned persons are legal heirs of deceased Respondent No.2. Delay condonation application at Exh.55 is on record and same is allowed. After death of a party legal heirs should be brought on record in order to decide the real controversy between the parties. If this is not done then it may create further litigation which may create multiplicity of proceeding. As parties have blood relations with each other, their appearance is required while deciding the legal issue created in the suit.

7. Appeal is filed in the year 2012 and is pending since then. If prayer of Respondent for issuing notice to LRs. and to decide the application thereafter is considered, then again it will delay the proceeding. Respondent No.2 is party in the suit and appeal against the suit is pending, therefore the decision of appeal is ultimately going to affect the rights of legal representatives of deceased Respondent No.2. Therefore in order to avoid further litigation and for the purpose of curtailing the time, it would be proper if the application is decided without issuing notices for hearing to proposed legal representatives of deceased Respondent No.2. Therefore, in order to avoid this type of situation I am of the opinion that the application should be allowed. For the aforesaid

reasons point no.1 is answered in affirmative. Hence, I pass following order.

**:: ORDER ::**

1. Application is allowed.
2. Applicant is directed to take on record the legal heirs of Responded No.2 more specifically described in Exh.53 in the cause title of the appeal memo within 14 days from passing of this order.
3. Applicant is directed to file amended Appeal memo.
4. Issue notice to legal heirs who are incorporated as per order below Exh.53.
- 5 . Application is disposed of accordingly.

Panvel,  
Dated :-28/07/2022

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