



:: Common Order Below Exh.32, 34, 36 & 39 in Civil M. A. No.159/2019 ::

1. Application at exh.32 and 39 is filed for taking legal heirs of deceased Respondent No.12 & 15 respectively on record, application at exh.34 is filed for condonation of delay for taking legal heirs of Respondent No.12 on record while application at exh.34 is for setting aside abatement in respect of Respondent No.12 and for consequential amendment in the application.
2. Say of other side was called upon. Legal heirs of Respondent No.12 & 15 have appeared through Advocate and have filed their say to these application which is at exh.47 & 50 respectively. Rest of Respondents have not filed their say hence, applications proceeded without say of other Respondents.
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.12 and 15 are requisite for determining real controversy between the parties?	Yes.
2	Whether delay in respect of Respondent No.12 should be condoned?	Yes.
3	Whether abatement in respect of Respondent No.12 should be set aside?	Yes.



4	What Order?	Applications are allowed.
---	-------------	---------------------------

:: REASONS ::

AS TO POINT NO.1

5. As per Applicant, Respondent No.12 has died on 10/11/2020 and Respondent No.15 has died on 31/08/2022. In support of this, Vaman Mahadev Patil has filed affidavit which is at exh.33, 35, 37 & 40 respectively. Copy of death certificate of Respondent No.12 & 15 is filed on record along with exh.31 & 42. Death certificate shows that Respondent No.12 has died on 10/11/2020 and Respondent No.15 has died on 31/08/2022.
6. As per Applicant, Lata Manik Patil, Shilpa Ramesh Patil, Seema Kailas Bhoir and Nilima Varun Patil are legal heirs of deceased Respondent No.12 while Anita Anant Patil, Azad Anant Patil, Sangram Anant Patil and Soniya Jayesh Patil are legal heirs of Respondent No.15. Application is filed at exh.32 is filed on 25/07/2022 while application at exh.35 is filed on 17/11/2022. If exempted period of Covid for limitation is considered then also there is delay in preferring the application at exh.32. Application at exh.35 is within limitation.
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. It would not be proper to reject application for taking legal heirs on record on ground of delay. Delay can be condoned in the interest of justice. After death of a party appeal abates unless right to sue survives. For just decision of the case, it would be proper to take legal heirs of deceased Respondent No.12 & 15 on record by condoning the delay and setting aside the abatement. Considering this aspect, I pass following order.

:: ORDER ::

1. Applications are allowed.
2. Applicant is directed to take legal representatives/heirs of deceased Respondent No.12 & 15 (more specifically described at exh.32 & 39) 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 of Respondent No.12 on record is condoned subject to cost of Rs.500/- (Rupees Five Hundred Only) to be paid to Respondents. If cost is not claimed by Respondent then same be credited in account of District Legal Services Authority, Raigad-Alibag.
4. Abatement of application against Respondent No.12 is set aside.
5. Applicant is directed to file copy of amended application.

(Application is disposed of accordingly)

Panvel,
Dated :-25/07/2023

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