

**:: Order on application dt. 11/06/2001 in Regular Civil Appeal No. 478/2019 ::**

1. Appellant has filed application for taking legal heirs of deceased Appellant No.2 Kamlabai Gangadhar Dharap on record.
2. As per Appellant, Appellant No.2 is dead and Ganesh Gangadhar Dharap, Vasant Gangadhar Dharap, Prakash Gangadhar Dharap & Veena Waman Bapat are legal heirs of deceased Appellant No.2.
3. This application was filed when matter was before Hon'ble Bombay High Court as First Appeal. Then it was transferred to District Court, Raigad-Alibag and later on it is transferred to District Court, Panvel. Matter is quite old and documents are tattered. Say of Respondent was not found. Therefore, application is decided on its own merit.
4. Perused record. Following points arise for my determination and findings thereon with reasonings are given as follows.

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1	Whether proposed legal heirs are requisite for determining real controversy between the parties?	Yes.
2	Whether there is delay in taking legal heirs on record and if yes should it be condoned?	Yes.
3	Whether there is automatic abatement of appeal due to death of Appellant No.2?	Yes. Abatement is set aside.
4	What order?	Application is allowed.

**:: REASONS ::****As to Point No.1 to 3**

5. In support of application, Vasant Gangadhar Dharap has filed notarized affidavit. Death certificate is not on record. As per record Appellant No.2 has on 16/01/2001 and he is survived by Appellant No. 3 to 6.
6. Application is filed after expiry of limitation period prescribed for taking legal heirs on record. Application for condonation of delay which was caused for taking legal heirs of deceased Appellant No.2 on record is not filed by Appellant. As per Applicant, legal heirs are already on record. Unless a party informs about legal heirs, it cannot be presumed that legal heirs of deceased are already on record. It is duty of concerned party to bring that fact to notice of court.
7. In application there is no mention about delay and no prayer for condonation of delay, if any, which may have caused is made by Appellants. It is clear that application is not filed within prescribed limitation period and there is delay of about three months.
8. Now questions arises whether in absence of delay condonation application for taking legal heirs on record, can that application be considered? 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 legal heirs is required while deciding legal issues created in the suit.

9. Appellant has not filed application for setting aside abatement after death of Appellant No.2. When a party to a proceeding dies, matter automatically abets against deceased person unless that person's heirs are taken on record. Appellant has not prayed for setting aside automatic abatement after death of Appellant No.2.
10. On ground of non-filing of delay condonation application and application for setting aside abatement, it would not be proper to reject application for taking legal heirs of deceased on record. By using inherent powers u/s.151 of Civil Procedure Code, 1908 Court can do justice, therefore in absence of pleading about condonation of delay and for setting aside abatement, application can be considered. In the interest of Justice and for just decision of the case it would be proper to take Appellant No.3 to 6 on record as legal heirs of deceased Appellant No.2, to condone the delay, if any, caused for taking themselves on record and to set aside automatic abatement in respect of Appellant No.2. Considering all these aspects, I pass following order.

**:: ORDER ::**

1. Application is allowed.
2. Appellant No.3 to 6 are taken on record as legal heirs of deceased Appellant No.2. Appellants are directed to carry out amendment in cause title of appeal memo within 14 days from passing of this order.
3. Whatever delay caused in taking legal heirs on record is condoned.

4. Automatic abatement of appeal due to death of Appellant No.2 is set aside.
5. Appellants are directed to file amended Appeal memo.  
(Application is disposed of accordingly.)

Panvel,  
Dated :- 15/12/2022

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