

**:: Common Order Below Exh.64, 66 & 68 in Regular Civil Appeal No.478/2019 ::**

1. Application exh.64 is filed for setting aside abatement in respect of deceased Appellant No.7 & 8. Application Exh.66 is filed for condonation of delay which has caused for taking legal heirs of deceased Appellant No.7 & 8 while application exh.68 is for taking legal heirs of Appellant No.7 & 8 on record.
2. Say of other side was called upon and Respondent No.1 & 2 have filed say overleaf the said application and have strongly objected these applications but reasons of objection are not given.
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.

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1	Whether proposed legal heirs of deceased Appellant No.7 & 8 are requisite for determining real controversy between the parties?	Yes.
2	Whether there is delay in taking legal heirs of deceased Appellant No.7 & 8 on record and if yes should it be condoned?	Yes.
3	Whether there is abatement of appeal due to death of deceased Appellant No.7 & 8?	Yes.
4	What order?	Applications are allowed.

**:: REASONS ::**

**AS TO POINT NO.1 to 3**

5. Point No.1 to 3 are discussed together to avoid repetition of facts. In support of applications, Anand Vidhyadhar Fadake has filed affidavits at exh.65, 67 & 69 respectively. Death certificate is not filed on record. Death of both is not disputed by Respondents. As per Applicant, in R.C.A. No.479/2019 legal heirs of deceased Appellant No.7 & 8 have been taken on record and they are same therefore, date of their death and certificate is not filed on record.
6. First Appeal No.342/1991 & First Appeal No.363/1991 are tagged together. In order in R.C.A. No.479/2019 this Court has observed that “Applicant could not get death certificate therefore Mutation Entries showing about death and legal heirs of deceased Respondent No.10 to 12 are filed on record”. In R.C.A. No.479/2019 present deceased Respondent No.7 & 8 have been shown as Respondent No.10 & 11. In both matters, Respondents are identical.
7. As per Applicant, Balaram Ziparu Kalokhe (son), Anil Ziparu Kalokhe (son), Mahesh Ziparu Kalokhe (son), Sangita Ganesh Dhakval @ Sangita Ziparu Kalokhe (daughter), Tarabai Ashok Jamghar @ Tarabai Ziparu Kalokhe (daughter), Nalini Anant Agivale @ Nalini Ziparu Kalokhe (daughter), Renuka Sunil Rewale @ Renuka Ziparu Kalokhe (daughter) & Manubai Ziparu Kalokhe (wife) are legal heirs of deceased Respondent No.7.
8. As per Applicant, Kusum Sitaram Dhakwal, Jamana Kaluram Thakare & Bhimabai Shivaji Revale are legal heirs of deceased Respondent No.8.

9. As per Applicant, when appeals were transferred to District Court Raigad they learnt from advocate on record of deceased Appellant No.7 & 8 that legal heirs have been taken on record in R.C.A. No.479/2019. Before Hon'ble High Court these two proceedings were clubbed and at that time an application was preferred by S. R. Dharap for taking legal heirs of Respondent No.10 & 11 therefore, separate application was not filed in present appeal. Now these two appeals are separately number therefore for clarity of record it is necessary to have names of legal heirs of deceased Appellant No.7 & 8.
10. Deceased Appellant No.7 & 8 are parties in R.C.A No.479/2019, no prejudice will cause to other side if in this appeal legal heirs of deceased Appellant No.7 & 8 are taken on record. As per Appellant, they came to know names of legal heirs on 22/12/2022 therefore, application is filed.
11. In exh.66 Appellant has not mentioned period of delay. Dates of death are not mentioned in the application. This Court has passed order in R.C.A. No.479/2019 wherein it is found that there is delay of 6 years in respect of deceased Appellant No.7 while in respect of deceased Appellant No.8 there is delay of 4 years.
12. 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.

13. Application is not filed within prescribed period of limitation and there is delay as mentioned earlier. When a party to a proceeding dies, matter automatically abets against deceased person unless that person's heirs are taken on record. If delay caused in taking legal heirs on record is considered then that delay is not normal one. As per Article 120 of Limitation Act, 1963, prescribed period for limitation is 90 days from the date of death. If the facts are considered and reason for delay is considered then it would not be proper to allow this application without imposing any cost for such delay. Therefore, in the interest of Justice and for just decision of the case it would be proper to take legal heirs on record, condone the delay and to set aside the abatement. Considering all these aspects, I pass following order.

**:: ORDER ::**

1. Application is allowed.
2. Appellant is directed to take legal representatives/heirs of deceased Respondent No.7 & 8 (more specifically described at exh.68) on record in cause title of the appeal memo within 14 days from passing of this order.
3. Whatever delay has caused for taking legal representatives/heirs of deceased Respondent No.7 & 8 on record is condoned subject to depositing cost of Rs.4,000/- (Rupees Four Thousand) to District Legal Services Authority Raigad-Alibag.
4. Automatic abatement of appeal due to death of Respondent No.7 & 8 is set aside.

5. Appellant is directed to file amended Appeal memo.
6. Issue notice to legal heirs/representatives who have been taken on record if they are already not on record.

(Application is disposed of accordingly)

Panvel,  
Dated :- 19/01/2023

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