

**:: Order On Application dt.16/07/2009 in Regular Civil
Appeal No.479/2019 ::**

1. Application is filed by Appellants for taking legal heirs of deceased Respondent No.10 to 12 on record.
2. Initially this application was filed as Civil Application No.4220/2009 in First Appeal No.342/1991 before Hon'ble Bombay High Court. Said application was restored by order dt.07/05/2012 as order dt.27/03/2012 passed by Hon'ble High Court was recalled. Application was pending for long time. Notices to propose legal heirs of deceased Respondent No.10 to 12 were issued.
3. On 29/10/2014 Respondent has filed affidavit in reply to present application. Application is resisted on ground that Appellant and Respondent No.4 to 13 are of one family despite that they are not bringing legal heirs on record. There is delay for bringing legal heirs of Respondent No.10 to 12 on record. Appellant and Respondents are in collusion with each other.
4. Heard Ld. Advocates for both sides.
5. Perused record. 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	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	Yes. Abatement is set aside.

	of Appellant?	
4	What order?	Application is allowed.

:: REASONS ::

As to Point No.1 to 3

6. As per Applicant, First Appeal No.342/1991 & First Appeal No.363/1991 were tagged together for final hearing and at that time it was noticed that Respondent No.10 to 12 are dead. Respondent No.10 has died on 23/12/2003, Respondent No.11 has died on 06/12/2005 and Respondent No.12 has died on 05/07/2001. 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.
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.10.
8. As per Applicant, Balaram Ziparu Kalokhe (Grandson), Anil Ziparu Kalokhe (Grandson), Mahesh Ziparu Kalokhe (Grandson) Sangita Ganesh Dhakval @ Sangita Ziparu Kalokhe (Granddaughter), Tarabai Ashok Jamghar @ Tarabai Ziparu Kalokhe (Granddaughter), Nalini Anant Agivale @ Nalini Ziparu Kalokhe (Granddaughter), Renuka Sunil Rewale @ Renuka Ziparu Kalokhe (Granddaughter), Kusum Sitaram

Dhakwal (daughter), Jamana Kaluram Thakre (daughter), Minabai Shivaji Rewale (daughter) & Manubai Ziparu Kalokhe (daughter-in-law) are legal heirs of deceased Respondent No.11.

9. As per Applicant, Yamunabai Ganpat Kalokhe (wife) & Ratnakar Ganpat Kalokhe (son) are legal heirs of deceased Respondent No.12.
10. As per Applicant, judgment and decree was passed against Applicant and deceased Respondents along with few other Respondents therefore cause of action continues against legal representatives/heirs of deceased Respondents. Fact of death of these Respondents came to knowledge of Applicant after 22/06/2009 and they have taken immediate steps to bring them on record.
11. If date of death of deceased Respondent No.10 to 12 is considered then there is delay of 6 years, 4 years & 8 years respectively for taking their legal heirs on record. Applicant has not mentioned from where they came to know about the death of deceased Respondents. In the application prayer is made for condonation of delay for bringing legal representatives/heirs on record. No request is made for setting aside abatement in respect of these deceased Respondents.
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. Applicant/Appellant is directed to take legal representatives/heirs of deceased Respondent No.10 to 12 (more specifically described in application dt.16/07/2009) 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.10 to 12 on record is condoned subject to depositing cost of

Rs.6,000/- (Rupees Six Thousand Only) to District Legal Services Authority Raigad-Alibag.

4. Automatic abatement of appeal due to death of Respondent No.10 to 12 is set aside.
5. Applicant/Appellant is directed to file amended Appeal memo.

Application is disposed of accordingly.

Panvel,
Dated :- 22/12/2022

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