

**COMMON ORDER BELOW EXHS.16, 18, 20 IN MISC. CIVIL
APPLICATION NO.47/2017**

(Madhukar Nathu Chandwale Vs Laxman Mahadeo Mhetre and
others)

1) The present application is filed for condonation of 1 year, 1 month and 13 days delay in moving the application for setting aside the abatement order and application for taking legal heirs of respondent No.11 Hirabai Chandwale. It is averred in the application that after the present application for restoration of original appeal is filed, on 9-1-2018 the respondent No.11 died at Mhaswad. The appellant was not aware of the death of the respondent No.11. After the Notice is returned unserved, the appellant came to know about her death. For obtaining the death-extract and information of legal heirs, time has gone. Hence, the applicant could not move the application in time. Therefore, it is prayed that the delay of 1 year, 1 month and 13 days be condoned and prayed for further orders.

2) The application is opposed by the legal heirs on the ground that the appellant and respondents are neighbours. Hence, they are aware of the death of respondent No.11. The averments in the application are false. In the alternative, it is submitted that if the application is allowed, then heavy cost be imposed.

3) Read the application supported by affidavit. Heard both the sides. Considering submissions of both sides, nature of dispute, I find that in the interest of justice and for proper adjudication of the real dispute between the parties, it will be proper to condone the delay and take legal heirs on record. However, considering the delay

cost needs to be saddled on the appellant. In the result, following order :

ORDER

1. Application Exh.16 is allowed subject to cost of Rs.500/- (Rs.Five Hundred).
2. Cost be paid to the respondents.
3. On depositing the cost, the order of abatement (Exh.18) is set aside.
4. The applicant to take legal heirs on record as per Exh.20 by carrying out necessary amendment on the same day, on which the cost is deposited.

VADUJ.
22nd February, 2019.

(D.D.Kurulkar)
Ad-hoc District Judge – 1, VADUJ.