

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Civil Application No. 04232 of 2019
(In Second Appeal No. 0512 of 2018)

District : Dhule

Gayasoddin Hiraji Patel,
deceased through L.Rs.,
Mubarak Gayasoddin Patel
& others.

.. Applicants.

versus

Bisabai Sardar Patel,
deceased through L.Rs.,
Nilnba Sardar Patel
& others.

.. Respondents.

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Mr. Mukul S. Kulkarni, Advocate, for the applicants.

*Mr. Y.G. Gujrathi, Advocate, for respondents
no.1A, 1C to 1F.*

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 26TH MARCH 2019

ORAL ORDER :

01. Present application has been filed for bringing legal representatives of respondent no.1B on record and to condone the delay of 1182 days as well as for setting aside abatement.

02. It has been contended that though respondent no.1B expired when the matter was before first

appellate Court and the said deceased was appellant herself, her legal representatives were not brought on record and only on 27th February 2019, statement was made by the learned Advocate representing the respondent, that respondent no.1B has expired. Therefore, taking into consideration this aspect, there was no mistake on the part of the appellant. He, therefore, prays for condoning the delay.

03. Learned Advocate appearing for respondents no.1A & 1C to 1F submits that he got the information about death of respondent no.1B recently when he made that statement on 27th February 2019.

04. As regards appellant is concerned, though the appeal was filed in 2018, the respondents have made the statement only on 27-02-2019 and after enquiry, it appears that way back on 30-09-2015, respondent no.1B had expired. The first appeal came to be decided on 21-03-2018 wherein the appellant herself was deceased. That means, the appeal came to be decided when she expired and that too without bringing her legal representatives on record. Therefore, as regards compliance under Order XXII Rule 10A of the Code of Civil Procedure, 1908 is concerned, it is only made on 27-02-2019. Therefore, there is good ground to condone the delay.

05. Hence, the following order :-

(a) The civil application is hereby allowed.

(b) The delay is condoned. The abatement of respondent no.1B is hereby set aside. The legal representatives of deceased respondent no.1B are permitted to be brought on record. Amendment to that effect be carried out within 14 days from the date of this order.

(Smt. Vibha Kankanwadi)
JUDGE

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