

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
907 WRIT PETITION NO.10031 OF 2018**

NILESH MOHANRAO GHATGE AND OTHERS ..PETITIONERS

VERSUS

SUNIL SAMBHAJI MARATHE AND OTHERS ..RESPONDENTS

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Mr. L. V. Sangeet h/f. Mrs. Minakshi L. Sangeet,
Advocate for the Petitioner.

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CORAM : S. V. GANGAPURWALA, J.
DATED : 03rd JANUARY, 2019.

PER COURT:-

1. The application filed by the original plaintiff for bringing on record the legal heirs of the deceased-petitioner no.3 is allowed. Aggrieved thereby, the present petition.

2. Mr. Sangeet, learned counsel for petitioners strenuously contends that the pursis was filed as required under Order 22 Rule 10(A) of Code of Civil Procedure, 1908, intimating the death of the deceased-defendant no.3. The plaintiff and the said defendant were residing in the same village. The plaintiff was aware of the death of the said defendant. However, still no steps were taken and after inordinate delay of 458 days, filed application for bringing on record the legal heirs. According to the learned counsel, the application is bereft of any reasons. The Court has condoned the delay in bringing on record the legal heirs and set aside the abatement in a casual manner. According to the learned counsel the approach of

the Court was not inconsonance with the provision of Order 22 of Code of Civil Procedure read with Section 5 of the Limitation Act.

3. I have considered the submission. Even, in absence of the said defendant, the Suit would not have been disposed of.

4. It is trite that the abatement has to be strictly construed and an application for setting aside the abatement has to be liberally construed.

5. The Court while allowing the application has exercised discretion. The discretion has been exercised in furtherance of substantive justice.

6. It is also trite that when technical considerations and cause for substantive justice are pitted against each other, the cause for substantial justice has to be subserved.

7. Considering the fact that the Suit is a substantive Suit for removal of encroachment and the discretion has been exercised in plausible manner, I am not entertaining the present writ petition. Writ Petition as such is disposed of. No costs.

(S. V. GANGAPURWALA)
JUDGE