

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL APPLICATION NO. 1577 OF 2018

IN

WRIT PETITION NO. 3954 OF 1998

Shashi Prithviraj Sachdev & Ors. ...Applicants

Versus

Shri Prithviraj Sachdev (Since Decd.) ...Respondents
Through LRs

Uday Mahajan a/w Rohan Kanade - Advocate for the
applicant.

Prashant Suryavanshi i/b G. M. Savagave - Advocate for
the Respondent 1A & 1C.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 25th JUNE 2019.

P.C. :

One Prithviraj filed Writ Petition No. 3954 of 1998.
Pending its disposal, he died in 2010. Then applicants 1A to 1D,
that is his widow and children, were brought on record, as his
legal representatives (LRs). After Prithviraj's death, his counsel
stood discharged, and the applicants, after coming on record,

engaged no advocate. Instead, petitioner 1B in person, as the applicants assert, prosecuted the case not only for himself but also for the other LRs. Later, both petitioner No.1B, and petitioner No. 1D, Prithviraj's son and widow respectively, too, died in 2016.

2. But before the death of petitioners 1B and 1D, the sole respondent, too, died on 25.12.2012. It seems, though the respondents' counsel informed the applicants about that death, they took no steps. Now faced with a delay of 502 days, the applicants, the remaining LRs, filed this application to bring on record, as they put it, the LRs of 1D. Besides they also want to bring on record the LRs of the deceased sole respondent—with a delay of 1771 days.

3. The applicants' counsel submits that until recently—that is, until the death of petitioner 1B, they had no counsel on record; it was petitioner 1B that was prosecuting the case till his death in 2016. The remaining applicants, the learned counsel submits, had no clue about the case. So only recently did petitioner 1C come across the case papers and then engaged the

counsel. According to him, the delay is eminently condonable in the above circumstances.

4. But the learned counsel for the LR's of the original respondent asserts that the laches was incurable. According to him, the very proceedings stood abated against the deceased respondent long back because of the applicant's delay and laches.

5. Though the delay is abnormal, I reckon the principle of abetment does not apply to the proceeding under Article 227 of the Constitution. By strict interpretation, even the concepts of delay and its condonation, too, do not apply. Of course, laches does.

6. At any rate, it is a matter of record that the applicants had no counsel until petitioner IB died. The applicants go on record asserting that only petitioner 1B was looking after the case and they had no knowledge. So under these exceptional circumstances, I reckon the delay is condonable.

7. I condone the delay with a cost of Rs. 5000/- to be paid to the respondents; on the applicants' complying with the

condition of costs, they may bring on record the LR's of the sole respondent.

8. Of the petitioners 1B and 1D, I am told 1B died a bachelor; 1D, Prithviraj's widow and mother of the other applicants, now after her death, sufficiently stands represented through the very applicants. So it is only a matter of deleting the names of petitioners 1B and 1D from the array of parties.

The Registry will permit the applicant to effect necessary changes to the pleadings and the cause tile. The applicants will pay the cost of Rs.5,000/- through cheque in four weeks to the first of the respondent LR's. Accordingly, Civil Application no. 1577 of 2018 is disposed of.

[DAMA SESHADRI NAIDU, J.]