

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

911 CIVIL APPLICATION NO.5137 OF 2019
IN CA/7468/2018 WITH CA/5138/2019 IN CA/7468/2018 WITH
CA/7468/2018 IN SAST/13316/2018 WITH CA/5140/2019 IN
CA/7468/2018 WITH CA/7469/2018 IN SAST/13316/2018

SARASWATIBAI TANAJI GAVANE AND OTHERS
VERSUS
TANAJI BABURAO GAVANE AND OTHERS

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Advocate for Applicants : Mr. Avinash N. Raut
Advocate for Respondent No.1 : Mr. S.N. Boiwar
Advocate for Respondent No.11 : Mr. S.R. Deshpande

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CORAM : MANGESH S. PATIL, J.

DATE : 17-03-2022

PER COURT :

Civil Application Nos.5137 of 2019, 5138 of 2019 & 5140 of 2019 :

1. These are the applications for setting aside the order of abatement of Second Appeal qua respondent nos.6, 9 and 5 respectively, with a prayer to condone the delay of 1206, 1762 and 2047 days in filing the Second Appeal.

2. Learned advocate Mr. S.R. Deshpande, who represents respondent no.11, strongly opposes all these applications on the ground that all these respondents were already dead even before the matter was decided by the lower appellate court and still their heirs

were not sought to be brought on record before the lower appellate court. He would further submit that there is no question of any abatement of the Second Appeal and the correction may not be allowed to be carried out.

3. It does appear that all these respondent nos.6, 9 and 5 who were also respondent nos.6, 9 and 5 before the lower appellate court have died when the matter was pending before it. However, as is pointed out by advocate Mr. Deshpande for respondent no.11, they had not appeared before the lower appellate court. Obviously, no intimation under Order-XXII, Rule 10A of the C.P.C. was ever given.

4. True it is that since these respondents no.6, 9 and 5 have died even before filing of the Second Appeal, there is no question of it being abated and it's setting aside.

5. When these respondents were not appearing before the lower appellate court and when their legal representatives have been served with a notice of these applications, but still have not appeared, even if strictly speaking there is no question of abatement and its setting aside, being necessary parties, they deserve to be added in the Second Appeal under Order-I, Rule-10 of the C.P.C. The applications

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are, therefore, disposed of granting leave to the applicants / appellants to carry out necessary amendment in the appeal memo and also the applications for condonation of delay.

6. The amendment to be carried out within two weeks.

7. After such amendment is carried out, issue notice to the legal heirs of respondent nos.6, 9 and 5 to be added, returnable within eight weeks, in the delay condonation applications in filing the Second Appeal.

(MANGESH S. PATIL)
JUDGE

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Gajanan