

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

**903 CIVIL APPLICATION NO.11446 OF 2021
IN SA/72/2000**

RASOOL MOHAMMAD PATEL DECEASED THROUGH LRS SK. GULAB AND
OTHERS
VERSUS
AZEER MOHAMMED PATEL DECEASED THROUGH PARVINBI AND ORS

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Advocate for Applicants : Mr. Bajaj Anil S.

Advocate for Respondent No. 2 : Mr. Ajinkya Kale h/f Mr. S.B. Talkar

CORAM	:	MANGESH S. PATIL, J.
DATE	:	22.02.2022.

PER COURT :

This is an application to set aside the abatement occasioned on account of death of the sole appellant who died on 30.12.2015, with a prayer to condone the delay in moving this application.

2. I have heard the learned advocate Mr. Bajaj for the applicant and Mr. Ajinkya Kale h/f Mr. Talekar learned advocate for the respondent No. 2. He strongly opposes the application and submits that no sufficient cause is being shown to condone the delay. The applicants are the heirs of original appellant and must have been aware about his death.

3. Considering the fact that the appeal was filed in the year 2000 and stood admitted by the order dated 23.08.2020, the approach of the Court in deciding such applications would be different as has been laid down in the case of **Perumon Bhagvathy Devaswom V/s Bhargavi Amma (D) Through L.Rs. (2008) 8 Supreme Court Cases 321**. Obviously, once the second appeal is admitted, the parties may not be as vigilant as they are expected to be causing the delay in moving such application for coming on record as legal representatives.

4. Besides, as is being mentioned in the application, the respondent No. 6 Shaikh Lal Rasool Patel in this application is also one of the heirs of the deceased appellant but perhaps he is not interested in being arrayed as appellant for the reasons best known to him.

5. Be that as it may, for reasons mentioned in the application it is allowed. The delay is condoned. The abatement is set aside. Necessary amendment to be carried out within two weeks.

(MANGESH S. PATIL, J.)

mkd/-