

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.94 OF 2022

IN

FIRST APPEAL NO.1081 OF 1996

Vijay @ Ambadas Dattatraya Pawar & Ors. ...Applicants
(Proposed Appellants)

In the matter between

Shri. Vijay @ Ambadas Dattatraya Pawar ...Appellant

Versus

Ramappa Ambanappa Masare & Ors. ...Respondents

Mr. Machhindra A. Patil, with Rayani Ambani for the Applicants /
Appellants.

Mr. R.S. Alange, for the LRs of Respondent No. 1 (i.e. 1A to 1C, 1E
and 1F).

Ms. Tanaya Goswami, AGP for the Respondent State.

CORAM : R.I. CHAGLA J

DATE : 05 December 2022

ORDER :

1. Heard learned Counsel for the parties.

2. By this Civil Application, the Applicants are seeking condonation of delay of 371 days in preferring the Civil Application.

3. Further relief is sought for setting aside the abatement of First Appeal No. 1081 of 1996 and for the Applicants/proposed Appellants to amend the Appeal memo by joining themselves as parties to the Appeal in place of original Appellant as per schedule annexed to the Civil Application.

4. The Applicants have stated that the original Appellant expired on 6th September 2015. Upon the demise of the original Appellant, the Applicants had taken steps to contact the original Appellant's Advocate. However, there was delay in doing so on account of their employment commitment and/or their residence at District Solapur.

5. Thus, there is delay of 371 days in filing First Appeal.

6. The Applicants have stated that the Applicants as legal heirs of the Appellant upon the death of the original Appellant, have legitimate right to proceed with the First Appeal in place of the

original Appellant.

7. There is an Affidavit in Reply of Respondent No. 2 dated 16th January 2017 which has opposed Civil Application on the ground that the date of knowledge and inability to contact the Applicants' Advocate is false. In other disputes between the parties steps were taken in time i.e. in Writ Petition No. 4195 of 2015 and Writ Petition No. 5324 of 2015 by filing Civil Applications. The Deponent of the Civil Application in the present case and in the Civil Applications filed in that case are the same.

8. I have considered the rival submissions and noted that the original Appellant had expired on 6th September 2015 and there has been delay in filing the present Civil Application to bring on record the legal heirs of the Appellant in place and stead of the original Appellant. This Court has in case of other parties to the First Appeal condoned such delay and this can be seen from the order dated 7th October 2022 passed by this Court in which the legal heirs of Respondent No. 3 and Respondent No. 7 have been brought on record by setting aside the abatement. In that case also there has been delay of nearly two years. In that view of the matter and

considering the likewise delay that has arisen herein in bringing the Applicants as legal heirs of the original Appellant in place and stead of the original Appellant in the First Appeal, similar order is required to be passed. Further, the Applicants should not be made to suffer due to default on the part of their Advocate. Hence, the following order is passed.:-

- (i) Delay of 371 days is condoned.
- (ii) Abatement of First Appeal No. 1081 of 1996 is set aside.
- (iii) The Applicants/proposed Appellants are permitted to carry out the amendment in the Appeal Memo in First Appeal No. 1081 of 1996 by joining themselves as party Appellants in place and stead of the original Appellant as per schedule annexed to the Civil Application.
- (iv) Amendment shall be carried out within a period of two weeks from uploading of this order.

(v) Civil Application is accordingly, disposed of.

9. At this stage, learned Advocate for the Respondent Nos. 1(a) to 1(c), 1(e) and 1(f) states that Respondent No. 1(d) has expired. Accordingly, the Applicants upon being joined as Appellants would require to take appropriate steps for bringing legal heirs of Respondent No. 1(d) on record.

10. Stand over to 10th January 2023.

[R.I. CHAGLA J.]