

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

**CIVIL APPLICATION NO. 408 OF 2015
ALONGWITH
CIVIL APPLICATION NO. 1883 OF 2017
IN
SECOND APPEAL NO. 1091 OF 2006**

Rajendrakumar Shankarsheth
Mujumale ...Applicant

vs.

Shri Hasham Kasam Varunkar
(since Decd. His Legal Heirs) and Ors. ...Respondents

**ALONGWITH
CIVIL APPLICATION NO. 729 OF 2019
IN
SECOND APPEAL NO. 1091 OF 2006**

Rajendrakumar Shankarsheth
Mujumale ...Applicant

vs.

Shri Hasham Kasam Varunkar
(since Decd. His Legal Heirs)
Shri Mubarak Hasham Varunkar and Ors. ...Respondents

**ALONGWITH
INTERIM APPLICATION NO. 17289 OF 2022
IN
SECOND APPEAL NO. 1091 OF 2006**

Rajendrakumar Shankarsheth
Mujumale ...Applicant

vs.

Shri Mubarak Hasham Varunkar and Ors. ...Respondents

Mr. Rahul Nerlekar a/w Mr. Mitesh Menon i/by Divya Shah Associ. -
Advocate for the Applicant

Mr. Keval P. Shah - Advocate for the Respondent Nos. 1A, 1D, 1F, 3, 4B, 4C,
4E.

CORAM : S. M. MODAK, J.

DATE : 12th AUGUST, 2022

P. C. :-

**CIVIL APPLICATION NO. 408 OF 2015
AND
CIVIL APPLICATION NO. 729 OF 2019**

1. Heard both the learned Advocates.
2. Civil Application No. 408 of 2015 was moved for setting aside the Order dated 12/02/2015 passed by the learned Registrar (Judicial-II). There is also prayer to add the name of the heir of Respondent No. 2. This Application remained pending for decision till 07/06/2019. There is Civil Application No. 729 of 2019 again praying for setting aside order dated 12/02/2015 passed by the learned Registrar (Judicial II). In the meantime, Respondent No. 2(a) Smt. Hanifa Usman Nalband expired and by way of Civil Application No. 729 of 2019 there is also prayer to add name of her Legal representatives as mentioned in the prayer clause (b) of the application. Notices were also issued to them. They were served but not appeared.
3. All the Respondents except Respondent No. 2 have already filed reply in Civil Application No. 408 of 2015, they want to file reply in Civil Application No. 729 of 2019. One week time is granted to file reply.

Though Order passed by the learned Registrar (Judicial-II) is set aside which was prayer in Civil Application No. 408 of 2015, another prayer is yet to be decided. Hence both the Applications will be heard after reply is filed.

CIVIL APPLICATION NO. 1883 OF 2017

4. Heard both the sides.
5. There are multiple prayers. Out of those prayers, it is submitted that all prayers are allowed except prayer clause no. (c). It deals with deleting the name of the deceased Respondent No. 1(d) and to add names of his legal representatives.
6. Learned Advocate for the Respondents submitted that he has instructions to appear for legal representatives. He has submitted that there is a delay in filing application and it is not properly explained.
7. For the reasons stated in para no. 8, prayer clause 'c' about deleting the name of the Respondent No. 1(d) and bringing Legal representatives and prayer for condonation of delay prayer (f) both are allowed.
8. Learned Advocate Mr. Keval P Shah waives notice for the proposed Legal representatives. Necessary amendment be carried out in the appeal memo. Civil Application No. 1883 of 2017 is disposed of.
9. Second Appeal No. 1091 of 2006 be kept on 07/09/2022.

INTERIM APPLICATION NO. 17289 OF 2022

10. Not on board. Taken on board.
11. Heard both the sides.
12. Respondent No. 1(a) Shri Mubarak Hasham Varunkar expired on 26/05/2020. Photocopy of the death certificate is annexed.
13. There is a delay of 785 days in bringing his Legal representatives.
14. Learned Advocate Mr. Keval P. Shah intends to file Power on behalf of the proposed Legal representatives. He has opposed to condonation of delay.
15. For the reasons stated in para no. 5 of the application delay is condoned subject to payment of cost of Rs. 2,000/- to be paid to Kirtikar Law Library within a period of two weeks.
16. Hence prayer clauses (a) and (b) are allowed. Necessary amendment be carried out. Interim Application No. 17289 of 2022 is disposed of.

[S. M. MODAK, J.]