

K.S. Jadhav

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

**INTERIM APPLICATION NO. 2885 OF 2021
IN
FIRST APPEAL NO. 1081 OF 1996**

**Vijay @ Ambadas Dattatraya Pawar
(deleted since deceased)
Through Kamal Ambadas Pawar & Ors.**

**...Applicants/
Appellants**

Versus

Ramappa Amanappa Masare & Ors.

**...Proposed
Respondents
(Original
Respondents)**

Mr. Machindra Patil i/b A.R. Rayani, Advocate for Applicants.

Mr. A.S. Alange, Advocate for legal heirs of Respondent No.1
i.e. for Respondent Nos. 1A to 1C and 1E to 1F

Mr. Abhinav A. Bhatkar i/b Vijay Killedar, Advocate for
Respondent Nos.6A to 6F in IA 2885/2021 and for Respondent
Nos. 7A to 7C in IA 2887/2021 and for Respondent Nos. 3A/3B1,
3B2, 3B3, 3C, 3D & Respondent No.5 in IA 2884/2021.

CORAM : R.I. CHAGLA, J.

DATE : 21st November, 2022.

ORDER :

1. By this Interim Application, the Appellant is seeking

condonation of delay of 11 months 22 days in preferring the Interim Application. Further relief has been sought for setting aside of abatement of First Appeal No.1081/1996. The Appellant has sought permission to amend the Appeal Memo in FA No.1081 of 1996 by joining the proposed Respondents in place of original Respondent No.6.

2. The Applicant has stated that the First Appeal had been filed against the judgment and order passed by the District Judge, Solapur in Civil Misc. Appeal No.248 of 1989 dated 14th February, 1995. During the pendency of the first appeal, original Respondent No.6 expired on 20th January 2020 leaving behind the proposed Respondents as the only surviving legal heirs and legal representatives, particulars of whom are annexed at Exhibit-A to the Interim Application as well as copy of Death Certificate of the original Respondent No.6.

3. Upon the death of original Respondent No.6, the Applicant/Appellant sought to contact their Advocates and duly informed and communicated the fact regarding the death of the

original Respondent No.3 to his Advocate. The Applicants' Advocate could not take appropriate steps to come on record for and on behalf of the original Appellant. Thereafter, the Applicant has stated that the Advocate on record has taken proper steps and the Applicants did not bother to check with their Advocate. It was upon the Applicants engaging their Advocate in another second Appeal, it was discerned that the Civil Application for bringing legal heirs on record has not been filed, and accordingly, the first Appeal had abated and was dismissed in default. The Applicants state that this fact has come to their knowledge only on 29th August, 2019 and thereafter they met their Advocate to take proper steps in the matter.

4. The Applicants state that the first Appeal had come on board on 11th February, 2020 when the Advocate appearing for the Respondent informed the Court that the Respondent No.6 has expired and no steps has been taken by the Advocate for Appellant. This Court had thereafter passed the said order directing that if such application has been filed by the Original

Plaintiff, the same shall be placed on board on 4th March, 2020 alongwith this Application. The reliance has been placed by the Applicants on the Covid Virus and in view thereof there was delay in filing the Interim Application. The delay is of 11 months and 22 days in preferring the Interim Application which Applicant has stated, is not deliberate and hence, the delay may be condoned.

5. Learned Advocate appearing for Respondent No.6A to 6F has submitted to the order of this Court.

6. Considering that by a prior order dated 7th October, 2022, this Court had allowed Interim Application No.2884 of 2021 for bringing the heirs of original Respondent No.3 on record as well as allowed Interim Application No.2887 of 2021 for bringing of Original Respondent No.7 on record where also there was delay and the abatement was set aside on account of the heirs of the concerned Respondents not objecting, a similar order is required to be passed.

7. Further upon considering the averments in the Interim

Application, I am satisfied that a case has been made out for grant of the relief sought for in the Interim Application as well as the delay in filing the present Interim Application has been satisfactorily explained. Hence, the following order is passed :

- i) The delay of 11 months 22 days in preferring Interim Application is condoned.
- ii) The abatement of first Appeal No.1081 of 1996 is set aside.
- iii) The Applicants are permitted to amend the Appeal Memo in First Appeal No.1081 of 1996 by joining the proposed Respondents in place or stead of original Respondent No.6 as the legal heirs of Original Respondent No.6.
- iv) The amendment shall be carried out within a period of 2 weeks from the date of this order.
- v) Interim Application is accordingly disposed of.

[R.I. CHAGLA, J.]