

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

**INTERIM APPLICATION NO. 16546 OF 2022
IN
FIRST APPEAL NO. 811 OF 1986**

Kamlabhai Hanmant Patil and ors. Applicants

In the matter between :-

Yashwant Chandrakant Patil (since
deceased) :

Shri. Hanmant Chandru Patil and ors. Appellants
v/s.

Mukund Nathuji Shelke (since deceased) :

Anusaya Mukund Shelke and anr. Respondents

Mr. Ajay Panicker i/b. Ajay Law Associates for the Applicants.

Mr. Balkrishna Joshi for Respondent Nos.1A and 1B.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 19th JULY, 2022.

P. C. :-

. This is an Application to condone the delay, set-aside the abatement and bring on record the legal representatives of deceased Appellant No.1(a).

2. Mr. Panicker, learned counsel for the Appellant states that the Appellant No.1(a) died on 30/11/2017. The legal representatives and the other Appellants had not informed him about the death of Appellant No.1(a) as a result the Application was not filed within time.

The death of the deceased Appellant No.1(a) was brought to his notice by learned counsel for the Respondents in the course of the hearing. He states that the reasons for not filing the Application have been spelt out in paragraph 5 of the Application. He submits that even otherwise the suit is for eviction and cause of action survives as against other Appellants and Appeal as a whole would not abate.

3. Mr. Joshi, learned counsel for Respondent Nos.1A and 1B submits that the Appellants have not made out sufficient cause to condone the delay and to set-aside abatement as against Appellant No.1A.

4. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

5. It is true that the Application for bringing on record legal representatives of the deceased Appellant No.1(a) is filed after the delay of 1585 days. In paragraph 5 of the Application, the Appellants have stated that Vilas Desai, the power of attorney of the Applicants was instructing the advocate. Said Vilas Desai is residing in Pune whereas the legal representatives are residing in Kolhapur. There was no contact with Vilas Desai and it was only on 01/07/2022 that the

advocate for the Appellants came to know about the death of the deceased Appellant No.1(a). It is stated that the delay was not deliberate and/or intentional.

6. It is true that the delay is inordinate, but it is not the length of delay but acceptability of the explanation is the criterion in such matters. The Applicants were represented by their power of attorney Vilas who was serving as a link between the advocate and the other Appellants. It is revealed that said Vilas did not contact the advocate and did not inform him about the death of Appellant No.1(a). As a consequence, no steps were taken to bring on record the legal representatives of the deceased Appellant No.1(a). The delay is not deliberate and appears to be bonafide. Even otherwise, the other legal representative is already on record and the Appeal does not abate as a whole. Taking justice oriented approach, rather than pedantic approach, the Application is allowed. The delay is condoned. Abatement as against Appellant No.1(a) is set-aside. Legal representatives of deceased Appellant No.1(a) are ordered to be brought on record. Cause title be amended within a period of one week from the date of uploading of the order.

7. Interim Application stands disposed of.

PREETI
H
JAYANI

(SMT. ANUJA PRABHUDESSAI, J.)

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