

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

**INTERIM APPLICATION NO. 506 OF 2022
(for condonation of delay)
IN
FIRST APPEAL NO. 484 OF 2004**

Ramsharan Rammanohar Choudhari
since deceased thr. L.R.S. Lalbahadur
Ramsharan Choudhary (Deceased)

...Applicant

Vs.

The Municipal Corporation of Gr.
Mumbai and anr.

... Respondents

...

Mr. Viraj Shelatkar, advocate for the applicant.
Mr. Santosh Parad, Advocate for M.C.G.M.-respondent

CORAM : SANDEEP K. SHINDE J.

DATE : THURSDAY, APRIL 21, 2022.

P.C. :

1. The appeal in question challenges the Decree in L.C. Suit No.496/2011, whereby appellant's suit questioning the legality of notice issued under Section 351 of the Mumbai Municipal Corporation Act, was dismissed. In Appeal, this Court stayed the execution of the suit notice issued under Section 351 of the Mumbai Municipal Corporation Act and admitted the

Appeal. Pending appeal, sole appellant passed away on 4th August, 2006. Since legal representatives were not brought on record within 90 days, Appeal abated. It appears, the appellant was represented through Constituted Attorney, Shri. Amar Choudhary, his son. It is submitted that, except Amar, heirs of deceased appellant were unaware of appeal proceedings and therefore they could not instruct their advocate to substitute them as appellants in the subject First Appeal. Applicants would contend that, in October, 2021, letter sent by Advocate in the name of deceased appellant was returned with remark “deceased” and therefore upon making enquiry, they came to know about the appeal instituted by their father. Thus argued, in the circumstances, they could not move the application to implead themselves as legal representatives of deceased appellant. It is contended that the suit premises in respect of which notice was issued, admeasures 17 ft x 9 ft. (approx). Therefore, it is submitted that in the interest of justice, the delay caused in preferring the application, may be condoned on such terms and conditions as this Court may deem fit and proper. Assistant Engineer (Building and Factory), Mr. Satyam T. Ladage, filed reply and opposed the application. The learned Counsel for the Corporation, submitted, the application does not make out sufficient cause for condoning the delay.

2. I have perused the application and reply filed by the Corporation. Admittedly, the appellant was represented through the Constituted Attorney, his son. Cause-title shows, most of the legal representatives were residing at their native place and therefore a possibility cannot be ruled out that, they were unaware of the appeal instituted by Ramcharan Choudhary. However, at the same time, a fact cannot be ignored that, there is inordinate delay in moving the application for their impleadment as legal representatives of deceased appellant. In consideration of the facts of the case and overall view of the matter, it would be just and proper to condone the delay subject to costs of Rs.30,000/- which the appellant shall deposit in the office of the Corporation within eight weeks from today i.e. on/or before 24th June, 2022. Subject to costs, the application is allowed and made absolute in terms of prayer clause (a).

3. It is made clear, if costs is not deposited within time, the order shall stand recalled automatically and in that event, the application shall stand dismissed without further reference to this Court.

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(SANDEEP K. SHINDE, J.)