

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO.360 OF 2019  
IN  
SUIT NO.545 OF 2014**

|                                  |                                        |
|----------------------------------|----------------------------------------|
| Mr. Murtuza Asgarali Rajkotwala  | ...Applicant                           |
| <b>In the matter between</b>     |                                        |
| Mrs. Zulekha Asgarali Rajkotwala | ...Plaintiff                           |
| <b>Vs.</b>                       |                                        |
| Mr. Ismail Mohsin Sham           | ...Defendant                           |
| <b>And</b>                       |                                        |
| Mr. Murtuza Asgarali Rajkotwala  | ...Applicant/<br>Proposed<br>Plaintiff |

Mr. Sharif Lakdawala i/b S. Shamim L. for Defendant.  
None for Plaintiff.

**CORAM: N. J. JAMADAR, J.**

**DATED : 8<sup>th</sup> DECEMBER, 2022**

**PC:-**

- 1.** Heard the learned Counsel for the defendant.
- 2.** This application is taken out to condone the delay about 325 days in seeking setting aside of the abatement and to bring the legal representatives of the plaintiff on record.
- 3.** The applicant asserts the suit was instituted by the plaintiff through the applicant as the constituted attorney. Plaintiff was the mother of the applicant. Father of the applicant pre-deceased the plaintiff.

**4.** Applicant is thus the sole legal representative of the plaintiff who passed away on 31<sup>st</sup> August, 2018.

**5.** In the application, it is avered that the applicant could not file the application within the stipulated period as there were circumstances which prevented the applicant from taking out the application. In paragraph No. 6 of the application, the applicant has ascribed multiple reasons.

**6.** The learned Counsel for the defendant submitted that there is no explanation for the delay for about 11 months. Therefore, the application deserves to be dismissed.

**7.** Evidently, the applicant has signed and verified the plaint in the capacity of Power of Attorney. Undoubtedly, there is delay in taking out the application setting aside the abatement. However, the reasons ascribed in paragraph No. 6 can not be said to be wholly unjustifiable.

**8.** In any event, the Court is required to lean in favour of condonation of delay so as to advance the cause of substantive justice.

**9.** Therefore, I am inclined to allow the application in terms of prayer Clause "a" to "c".

**10.** The abatement stands set aside.

**11.** The plaintiff shall carry out necessary amendment in accordance with the schedule within a period of six weeks and serve copy of the amended plaint on the defendant.

**12.** Application stands disposed.

**[N. J. JAMADAR, J.]**