

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 9144 OF 2022 IN
FIRST APPEAL NO. 2890 OF 2009

Khajabi w/o Dawal Sayyad
(Deceased through LRs)

Applicants

Versus

State of Maharashtra & others

Respondents

Mr. G. R. Syed, Advocate for the applicants.
Mr. A. R. Kale, AGP for the State.

CORAM : R. M. JOSHI, J.
DATE : 6th FEBRUARY, 2023.

PER COURT :

1. This is an application for condonation of delay of 3417 days in filing application for setting aside abatement of First Appeal No. 2890/2009 and for bringing legal heirs of deceased appellant on record.

2. Learned counsel for applicants submits that the right to sue survives in favour of the present applicants and for want of sufficient knowledge of law as well as the fact of pendency of first appeal, applicant could not be filed in time. He further submitted that the original proceeding pertains to the challenge to the compensation awarded against compulsory acquisition of the land.

3. Learned AGP opposed the said submissions.

4. No doubt, delay is caused in bring legal heirs of deceased appellant on record. However, the proceeding pertains to payment of adequate compensation in case of compulsory acquisition of the land. As rightly pointed out by learned counsel for the applicants that present applicants and respondents No. 3 and 4 being legal heirs of deceased appellant, right to sue survives in their favour.

5. In the circumstances, interest of justice requires condonation of delay. Delay occurred in preferring application for setting aside abatement of first appeal stands condoned. Appeal be restored to its original number. Legal heirs of deceased appellant are permitted to be brought on record. Amendment be carried out within two weeks. Civil application stands disposed of.

(R. M. JOSHI)
Judge