

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.16027 OF 2022
IN SA/68/2008**

**PRABHAKAR MANIK SALUNKE
VERSUS
BHAUSAHEB SHANKAR SALUNKE DIED LRS. LAXMIBAI
BHAUSAHEB SALUNKE AND ORS.**

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Mr. Amol K. Gawali, Advocate for the Applicant.

Mr. V. S. Bedre, Advocate for Respondent Nos.1-a to 1d.

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CORAM : S. G. CHAPALGAONKAR, J.

DATE : 20th JULY, 2023.

PER COURT:-

1. By this application, the applicant seeks to condone the delay of 42 days caused in filing the application to set aside the order of the learned Registrar (Judicial) of this Court dated 06.07.2022 and also seeks to quash and set aside the said order. The applicant has also prayed to condone the delay of 811 days caused in filing the present application for setting aside abatement and seeks permission to bring on record the legal representative of the original respondent-Bhausaheb Shankar Salunke on record of Second Appeal.

2. The learned Advocate appearing for the applicant submits that this is a admitted appeal in the year 2008. The respondent expired on 03.08.2020 i.e. during the period when Covid-19 pandemic was at it's serge. He submits that on 02.02.2022, learned Advocate appearing for the applicant has

submitted an intimation regarding death of the sole respondent. However, no contact could be established between the respondent and his Advocate. Finally, on receipt of the notice in execution sometimes in the month of November-2022, the applicant got the knowledge of the order passed by the learned Registrar (Judicial) of this Court. He submits that the delay caused in filing the application is unintentional. The parties are litigating for the rights over the immovable property. Therefore, liberal approach needs to be taken.

3. Per contra, Mr. Bedre, learned Advocate appearing for the respondents submits that the appellant and the respondents are relatives. The applicant cannot contend that he had no knowledge of the death of the respondent. He would submit that the delay is caused on account of negligence on the part of the applicant and he cannot take disadvantage of the same.

4. Having considered the submissions advanced by the respective Advocate appearing for the parties, it can be gathered that the parties are litigating for the partition of the immovable property. The valuable rights of the parties are subjudice in the Second Appeal. The death of the respondent occurred during the pandemic period. After considering the extension of limitation by general order passed by the Hon'ble Supreme Court of India, the delay caused in filing the application can be discounted. Admittedly, the intimation regarding the death of the respondent was submitted by the learned Advocate appearing for the respondent on 02.02.2022. Thereafter, by order dated 06.07.2022, the learned Registrar (Judicial) of this Court disposed the appeal by conditional order. In that view of the matter, if the reasons as

stated in the application are taken into account, the sufficient cause is made out to condone the delay and permit the applicant to bring on record the legal heirs of deceased respondent. Hence, the following order:-

ORDER

a. Civil Application is allowed in terms of prayer Clauses 'B', 'C', 'D', 'E', 'F' and 'F-1'.

b. Amendment to be carried out within a period of 14 days from today.

5. Civil Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE