

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

**INTERIM APPLICATION NO. 4635 OF 2023
IN
FIRST APPEAL NO. 2569 OF 2007**

Kantadevi Rajkumar Gupta
since deceased thr.LRS
Sanjay Rajkumar Gupta and Ors.

... Applicants

Versus

Municipal Corporation of Gr. Bombay
WITH

... Respondents

**INTERIM APPLICATION NO. 4636 OF 2023
IN
FIRST APPEAL NO. 2569 OF 2007**

Rajkumar Chiranilal Gupta
since deceased thr.LRS
Sanjay Rajkumar Gupta and Ors.

... Applicants

Versus

Municipal Corporation of Gr. Bombay

... Respondents

Mr. R.M. Nakhawa i/b Vasant Dhavan for the Applicant.

Mr. R.Y. Sirsikar for the Respondent-MCGM.

**CORAM: M.M.SATHAYE J.
DATE : 16th JUNE 2023**

PC. :-

1. Heard learned Counsel for the Applicant/ proposed legal heirs of original Respondent Nos. 1 and 2 and learned Counsel for original

Appellant i.e. MCGM.

2. The main Appeal is filed by Municipal Corporation challenging the order by which rateable value of the subject matter property is fixed. The subject matter property is Ashish Theater at Chembur.

3. Learned Counsel for the Applicants submitted that during the pendency of the Appeal, which is already admitted, Respondent Nos. 1 and 2 have expired in 2001 and 2017 respectively leaving behind present applicants as their legal heirs. He further submits that apart from being legal heirs of the Respondent Nos. 1 and 2, present Applicants are also partners in the subject matter property i.e. Ashish Theater and, therefore, their names are required to be brought on record of the present First Appeal. It is submitted that infact it was duty of the Appellant (MCGM) to bring legal heirs of the deceased Respondent Nos. 1 and 2 on record. However, Applicants have approached the Court.

4. Apparently, there is considerable delay in the case of Respondent No. 1. Learned Counsel for the Applicants invited attention of this Court to communication dated 02/01/2023, where-

under request was made to the Appellants/Municipal Corporation to take necessary steps for bringing on record the names of the present Applicants as partners of M/s Ashish Theater. It is seen from this letter that necessary details of the Applicants were supplied. Despite that, no application for bringing legal heirs is filed by original Appellant. Despite the fact that Appellant (MCGM) should have been diligent to take necessary steps, they have not taken and Appeal is abated in law. The Respondent's heirs are in fact benefited by that. Despite this, said heirs/Applicants have volunteered to approach the Court helping this litigation to take to its logical end/adjudication.

5. Inviting Court's attention to paragraph Nos. 9 to 12 of the Application, it is urged that sufficient cause is made out for condonation of delay and for consequential prayer of bringing the Applicants on record. Copy of Application is served upon the original Appellant i.e. MCGM on 24/03/2023. Concerned acknowledgments are shown to the Court. It is submitted that Applicants will file necessary affidavit of service within three weeks from today. Statement is accepted. Admittedly, no reply is filed till the date.

6. In the peculiar facts and circumstances narrated above and considering the fact that the Applicants apart from being legal heirs of original Respondents are also partners of the partnership firm running Ashish Theater, sufficient cause is made out for bringing their names on record.

7. In that view of the matter, both Interim Applications are allowed in terms of prayer clauses (a), (b) and (d). Delay is condoned. Abatement of First Appeal No. 2569 of 2007 is set aside, Applicants are permitted to be brought on record as legal heirs of original Respondents. Original Appellant i.e. MCGM to carry out necessary amendment in the Appeal within three weeks from today.

8. Both Interim Applications are disposed of in the aforesaid terms.

[M.M.SATHAYE,J.]