

Harish

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

**CIVIL APPLICATION NO.1001 of 2019
IN
SECOND APPEAL (ST) NO.15611 OF 2018**

Shri. Sadashiv Ramchandra Wagmode ...Applicant

Mitabai Tulshiram Bandgar
(Decd. Through Legal Heirs)
Ganpat Tulshiram Bandgar & Anr. ...Respondents

Mr. Viraj R. Patil, for the Applicant.

Mr. Ghule Sahil Satyavan h/f Avinash Bhaskarao Ahvad for
Respondent No. 2.

CORAM : MADHAV J. JAMDAR, J.

DATE : 13th MARCH, 2023

P.C.:

1. This Civil Application is taken out seeking condonation of delay of 4 days in filing the Second Appeal.
2. This Court by order dated 26th July, 2019 issued notice to the Respondents. Accordingly, the notice has been served on Respondent No. 2.
3. Respondent No. 1 is “Mitabai Tulshiram Bandgar (Deceased through legal heirs) Ganpat Tulshiram Bandgar.” It appears that, the Original Defendant Mitabai Tulshiram Bandgar passed away during the pendency of the Suit and name of her heir is brought on record in the learned Trial Court as “Ganpat Tulshiram

Bandgar.” The same name is reflected in the title of the Judgment of the learned First Appellate Court.

4. As per the Baillief report dated 28th March, 2022, the notice of Respondent No. 1 returned un-served with remark that the name of “Namdev Tulshiram Bandgar” is wrongly mentioned as “Ganpat Tulshiram Bandgar.” The record of this case shows that, the name is in accordance with the record of the learned Trial Court as well as the learned First Appellate Court and the same is “Ganpat Tulshiram Bandgar.” Thus, the Respondent No. 1 is trying to avoid service.

5. The delay is only of 4 days. Therefore, for the reasons set out in the Civil Application, the same is allowed in terms of prayer clause (a).

6. The Civil Application is disposed of in above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)