



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 17311 OF 2023

IN

WRIT PETITION NO. 7032 OF 2011

Gopal Ramchandra Balgi ... Applicant.

In the matter between:

Waman Ramchandra Balgi and Ors. ... Petitioners.

Versus

The Board of Trustees of the Port of
Bombay and Ors. ... Respondents.

Mr. Rushikesh S. Kekane i/by Ms. Aditi S. Naikare, Advocate for the Applicant.

Mr. Ajay Fernandes a/w. Ms.Nina D. Motiwala i/by Motiwala & Co., Advocate for the Respondent No.1.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : NOVEMBER 29, 2023.

P. C. :

1. Not on board. Upon mentioning taken on board.
2. By this Interim Application, the Applicant seeks to bring on record the legal heirs of deceased Petitioner No.1 and for condonation of 7 years and 44 days caused in filing the application and for setting aside the abatement.
3. Learned counsel appearing for the Applicant submits that the petition is of the year 2011 and as soon as they were informed by

the legal heirs of deceased Petitioner No.1 about his death, interim application has been taken out. He would submit that the reason for the delay is the lack of knowledge till informed by the legal heirs of the deceased Petitioner No.1, who were not aware that the death of Petitioner No.1 was required to be communicated to the Advocate.

4. Learned counsel appearing for the Respondent contests the application and submits that the reason set out for the delay is ignorance of law which cannot be accepted. He submits that it is for the litigant to be diligent and to bring on record the legal heirs within time and there is no reason to set aside the abatement.

5. Writ Petition is of the year 2011 and is pending for admission. During the period of 12 years, the Petitioner No.1 has expired and it appears that the legal heirs were unaware that the fact has to be communicated to the Advocate. As there was huge gap of time after filing of petition, no fault can be found with the Applicant for preferring this application after a delay of 7 years and 44 days. The reason set out is that the legal heirs delayed communicating to the Advocate the fact of demise of the deceased Petitioner No.1, which is a perfectly acceptable explanation for the delay.

6. As such, I am inclined to allow the application. Interim

Application is allowed.

7. Amendment to be carried out within a period of two weeks from today.

(Sharmila U. Deshmukh, J.)