

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

**INTERIM APPLICATION NO.630 OF 2023
IN
FIRST APPEAL NO.1303 OF 2016**

Surendra Govind Nemivant Applicant

versus

Sharmishta R. Deshpande & Ors. Respondents

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- Mr. Atharva A. Dandekar a/w Padmini Ainapure i/b. Akshata Naik, Advocate for Applicant.
- Mr. Ketan Parekh, Advocate for Respondents.

**CORAM : SARANG V. KOTWAL, J.
DATE : 23rd JANUARY, 2023**

P.C. :

1. Leave to amend. Amendment to be carried out forthwith to correct the title of this application.

2. In the First Appeal No.1303 of 2016 Smt. Sharmishta R. Deshpande was the First Respondent. The application mentions that she died on 25/03/2021 leaving behind two legal heirs namely Ramesh Dattatray Deshpande who was her

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husband and Abhijit Ramesh Deshpande who was her son. Learned counsel appearing for the Respondent No.2 has no objection if these two legal heirs are brought on record in the main Appeal in place of the Respondent No.1.

3. Considering these submissions of both learned counsel, the application is allowed for bringing the legal heirs of the Respondent No.1 on record. Both these legal heirs are permitted to be brought on record in place of the Original Respondent No.1 Smt. Sharmishta R. Deshpande

4. Learned counsel further submitted that since the Appeal stood abated against the Respondent No.1 by virtue of Rule 4 Sub-Rule 3 of Order XXII of Code of Civil Procedure, the abatement needs be set aside as the Appellant was not aware of the death of the Original Respondent No.1. He also prays for condonation of delay in preferring the present application. Learned counsel for the Respondent No.1 fairly states that he has no objection if both these prayers are granted. Therefore,

the delay in filing the application for bringing the legal heirs of the Respondent No.1 on record, is condoned. The abatement of the Appeal against the Respondent No.1 under the provisions of Order XXII Rule 4 (Sub-Rule 3) of CPC is set aside, based on the provisions of Order XXII Rule 5.

5. The application is disposed of.
6. The necessary consequential amendment be carried out in the original Appeal proceedings.

(SARANG V. KOTWAL, J.)