

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CAF NO.54/2023 AND CAF NO.57/2023 IN FA NO.587/2014

Ashok s/o Wamanrao Nagtode and anr

..VS..

The State of Mah., thr.its Collector, Wardha and ors

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

.....
Shri A.R.Chavan, Counsel for Appellants.

Shri B.N.Jaipurkar, Counsel for R-3.

Ms T.H.Udeshi, AGP for R-1 & 2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 15/02/2023

1. At the outset, Advocate Ms Aarti Singh h/f learned counsel Shri P.D.Meghe appearing for respondent No.3/Zilla Parishad submits that Advocate Shri P.D.Meghe is not on the panel of the Zilla Parishad and, therefore, name of Advocate Shri P.D.Meghe appearing for respondent No.3 be deleted and he be discharged.

2. By this application, appellants are seeking condonation of delay caused in filing application for setting aside abatement of appeal and for bringing legal heirs of deceased appellant No.2 on record.

3. As per learned counsel Shri A.R.Chavan for appellants, the appeal is preferred against judgment and decree passed by learned Joint Civil Judge Senior Division, Wardha. During pendency for the appeal, appellant No.2 Kamlabai died on 23.11.2020 leaving behind her appellant No.1 and two daughters. Applicants were not aware about this proceeding and, therefore, they have not approached to add them as legal heirs of appellant No.2 on record and, therefore, delay of 267 days is caused in filing the application for setting aside abatement.

4. Learned Assistant Government Pleader Ms T.H.Udeshi for respondent Nos.1 and 2 raised objection on the ground that the delay is not explained properly.

5. Learned counsel Shri B.N.Jaipurkar appearing for

respondent No.3 submits that the delay is not properly explained. Hence, the application be rejected.

6. Heard learned counsel for parties and perused the application.

7. One of legal heirs of appellant No.2 is already on record i.e. appellant No.1 and, therefore, the appeal cannot be abated against appellant No.2. However, other legal heirs of appellant No.2 are necessary parties and as they were not aware about proceedings, they had not approached to this Court. The delay is properly explained.

8. For reasons stated in the application, the application is allowed. The delay stands condoned. Legal heirs of appellant No.2 be brought on record. Necessary amendment be carried out within a period of four weeks from today.

9. The civil applications are **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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