

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

SECOND APPEAL NO. 641 OF 2005

SMT.SHANTABAI GANGARAM PIMPALKAR and ANOTHER. VS GANGABAI MOTILAL GUPTA and OTHERS.

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

Court's or Judge's Orders.

Smt. Vijaya Thakre, Advocate for appellants.
Shri. Vikrant Pandey, Advocate h/f. Shri. N. S. Khubalkar,
Advocate for respondent Nos.1(A) to 1(E).
Shri. D. S. Lambat Advocate for respondent Nos. 4(b) (i)
and 5(i).

CORAM : ANIL L. PANSARE J.

DATE : 14/06/2023

CIVIL APPLICATION (S) NO. 911 OF 2021

By the present application, the appellant No.2 is seeking to bring on record legal representatives of respondent No.4(b), who expired on 23/09/2021. The application has been filed on 01/12/2021, i.e. within 90 days.

2. Learned counsel for the appellant submits that notices have been issued. The learned counsel appearing for respondent No.1 and 4(b)(i) and 5(i) has no objection, if the application is allowed.

3. In view of the above and for the reasons set out in the application, the application is allowed. The appellants are allowed to bring on record the legal representatives of respondent No.4(b) as mentioned in para 2 and 3 of the application.

4. Application disposed of in above terms.

CIVIL APPLICATION (S) NOS. 910 OF 2021 R/W 912 OF 2021

By these applications, the appellant No.2 is seeking to set aside the abatement against respondent No.5 and further seeking condonation of delay of 2190 days in filing the application for bringing legal representatives of respondent No.5 on record.

2. Heard. The respondent No.5 has expired on 11/11/2015. Learned counsel for the appellant No.2 submits that the legal representatives of respondent No.5 were not aware of the law that requires bringing on record, the legal representatives, and hence kept silent. Thereafter, when the appeal was listed on 22/11/2021, the counsel informed the date to the appellant. Thereupon, the appellant met the counsel and during discussion informed the

counsel that respondent No.5 and respondent No.4(b) have expired. The counsel immediately instructed to get the death certificate of respondent Nos.5 and 4(b) and further to get the details of legal representatives. In doing so, the delay has been caused. The learned counsel submits that the delay is not intentional and accordingly prayed to condone the same.

3. Learned counsel for respondent has opposed the application on the ground that there is a huge delay and that it has not been justified.

4. It is the well known that the second appeals are not listed for months together. This appeal is of the year 2005. The record shows that this appeal was listed on 05/09/2013 and thereafter, on 27/02/2020 and then on 29/10/2021. In such situation, the counsel and applicant would not meet frequently and that therefore, the learned counsel for appellant has rightly pointed out that when the appeal was listed in November 2021, appellant's counsel informed the appellant and that upon meeting with appellant the counsel got to know that respondent No.5 has expired. The necessary steps thereafter have been taken immediately. In the circumstances, it cannot be said that the delay is not

justified. There appears nothing on record that delay is intentional and therefore, in the interest of justice the delay ought to be condoned, hence the following order :-

ORDER

(A) The application is allowed.

(B) The delay in filing application for bringing legal representatives of respondent No.5 on record is hereby condoned.

(C) The order of abatement against respondent No.5 is set aside.

(D) The appellant No.2 is permitted to bring on record the legal representatives of respondent No.5.

(E) The necessary amendment be carried out within one week and amended copy be served to other side.

JUDGE