

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 SECOND APPEAL NO. 630 OF 2013
WITH
CIVIL APPLICATION NO. 3394 OF 2024
IN SA/630/2013

NANASAHEB ASARAM BOBADE (DIED)
THROUGH LRS.

VERSUS

SHIVAJI BABURAO TIGOTE AND ANOTHER

...

Mr. Vikas G. Kodale h/for Mr. V. D. Gunale, Advocate for Appellant

CORAM : Y. G. KHOBRAGADE, J.

DATE : 4th April, 2024

ORDER:

1. By the present application, the applicants prays for substitution of their names in place of their father/original appellant who died on 05.10.2020 well as for condonation of delay of 1178 days caused in filing the present application and setting aside the abatement.

2. It is pertinent to note that on 03.05.2013 the appellant instituted the second appeal questioning the judgment and order dated 04.02.2013 passed by the learned District Judge, Aurangabad in RCA No. 33 of 2009 arising out of judgment and decree dated 11.08.2008 passed by the learned Civil Judge, Junior Division, Paithan in RCS No. 147 of 2005. However, the appeal never came up before the Court for hearing/admission after 19.09.2013 and on each date, the learned counsel for the appellant had sought adjournment.

3. Since the cause of action survives and the applicants are legal heirs of deceased appellant, it would be just and proper to condone the delay on the grounds set out in the application.

4. In view of the above, I am inclined to grant the present application and proceed to pass the following order:

O R D E R

(A) Civil application is hereby allowed. Delay of 1178 days caused in filing the application is hereby condoned.

(C) Abatement is set aside.

(B) The applicants are permitted to substitute their names as appellants being legal heirs of the deceased appellant.

(D) Necessary amendment be carried out within two weeks, failing which this order will be recalled.

(Y. G. KHOBRAGADE, J.)

JPChavan