

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**13 CIVIL APPLICATION NO. 14842 OF 2022
IN SA/598/2018**

**SINDHUBAI MAHADEO KENDRE
VERSUS
BABURAO RANBA NEHARKAR AND OTHERS
WITH
SECOND APPEAL NO. 598 OF 2018**

**WITH
CIVIL APPLICATION NO. 9146 OF 2018
IN SA/598/2018**

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Mr. Avinash Patil, Advocate holding for Mr. Shailesh
Chapalgaonkar, Advocate for the applicant.

Mr. A.R. Tapse, Advocate holding for Mr. P.D. Suryawanshi,
Advocate for respondent Nos.1 and 2.

Mr. A.R. Tapse, Advocate for respondent Nos. 6D, 6E, 6H, 8A, 9
and 11.

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**CORAM : SANDIPKUMAR C. MORE, J.
DATED : 15 January 2024**

ORDER:-

IN CIVIL APPLICATION NO. 14842 OF 2022 :

1. Heard rival submissions.
2. The applicant i.e. original defendant No.2, who has filed the second appeal, is seeking permission to bring on record the legal representatives of respondent Nos.3 to 5 by condoning the delay as well as setting aside implied abatement order. They also claimed for setting aside abatement order against respondent Nos.7 and 8 dated 02.05.2019.
3. Learned Counsel for respondent Nos.1 and 2, who are the original plaintiffs, has strongly opposed the application on the ground that decree passed by the learned trial Court is in their

favour whereas the first appellate court has also confirmed the same. According to him, there is inordinate delay in filing this application.

4. It appears that though certain grounds are raised for condonation of delay, but the same are not genuine grounds. It is difficult to believe that the applicant was not knowing death of respondent Nos.3 to 5 and their respective legal representatives. However, considering the statutory right of the applicant, the delay caused in filing this application can be condoned by awarding suitable cost to the contesting respondent Nos.1 and 2. Accordingly, the application stands allowed in terms of prayer clauses (B), (C) and (D) subject to cost of Rs. 2000/- to be paid to respondent Nos.1 and 2 in equal proportion within the period of two weeks. The necessary amendment be carried out within the stipulated period. Application is accordingly disposed of.

5. List the appeal and other application on 29.01.2024. Interim relief granted earlier, to continue till then.

(SANDIPKUMAR C. MORE, J.)