



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION (ST.) NO.4818 OF 2024
IN
SECOND APPEAL NO.172 OF 2011

Smt. Parvati Shankar Nimbalkar and Ors. ... Applicants.
In the matter between:
Shankar Vithoba Nimbalkar ... Appellant.
Versus
Mrs. Lalita Suresh Gugale ... Respondent.

Mr. Nitin Muley, for Applicants.
Mr. Chaitanya B. Nikte a/w Mr.Ritvij Atul Kale i/by Mr.Prajit S.
Sahane, for the Respondent.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : FEBRUARY 16, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Interim Application has been preferred by the legal heirs of the deceased sole-Appellant for being impleaded as heirs of the original deceased-Appellant and for condonation of delay of 11 years and 68 days caused in filing the present Application and for setting aside the abatement.
3. Learned counsel appearing for the Applicants submits that there is delay in filing the present Application, as the Applicants

were not aware that the fact of the death of the original-Appellant would have to be brought to the notice of their Advocate. He further submits that it is only when the matter was listed on final hearing board that the contact was established and they informed the Advocate about the death of the original-Appellant. He submits that after the Appeal has been admitted in the year 2011, there was no communication and as such, there is a delay in filing the present Application.

4. *Per contra*, learned Advocate appearing for the Respondent opposes the Application. He submits that no sufficient cause has been shown for condoning the collusal delay of 11 years and 68 days caused in filing the Interim Application. He further submits that exemplary cost be imposed, if the delay is to be condoned.

5. Considered the submissions and perused the record.

6. Second Appeal is of the year 2011 and after admission came to be listed on 17th January, 2024 on the final hearing board. It is well known that after the Appeal is filed and admitted, usually there is no communication between the office of the Advocate on record and the Appellant and it is only when the matter is listed on the final hearing board that necessary instructions are required to

be obtained and as such communication is established.

7. In the instant case, immediately after the filing of the Second Appeal in the year 2011, on 28th August, 2012, the Appellant has expired. It cannot be doubted that after the Appeal had been filed and admitted, the legal heirs would not have immediately contacted their Advocate to apprise him of the fact of death for filing of necessary Application in court proceedings. It needs to be noted that the Applicants are agriculturists and would not be aware of the legal procedure. It is only when the matter was listed on the final hearing board that the Advocate on record was made aware of the death of the sole-Appellant and necessary Application has thereafter been taken out promptly. Hence, sufficient cause has been shown to condone the delay of 11 years and 68 days. It is not shown that by reason of not amending the Appeal, any prejudice has been caused to the Respondents so as to impose any cost upon the Applicants.

8. In that view of the matter, Interim Application is allowed. Amendment to be carried out within a period of two weeks from today.

(Sharmila U. Deshmukh, J.)