



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

**CIVIL APPLICATION NO. 2228 OF 2025
IN SA/87/2025**

**SUSHILA RAMESH KANJAR
VERSUS
NARESHKUMAR JAVHARILAL JAIN**

.....
Advocate for the Applicant : Mr. Girish V.Wani i/by. Mr.Niranjan Vasant Dhake
Advocate for Respondent No.1-A (Caveator) : Mr.S.PShah

...
CORAM : SHAILESH P. BRAHME, J.
DATE : 23rd JUNE 2025

PER COURT :

. This application is for condonation of delay of 960 days in bringing heirs of deceased Applicant no.3-Mangala Dinesh Kanjar on record and setting aside abatement.

2. It is contended that Applicant No.3-Mangala Dinesh Kanjar died on 28.02.2022 during pendency of appeal before lower appellate court. Her heirs are on record as the Respondent Nos.3-A to 3-C. As there was no independent order of setting aside abatement and the heirs are necessary parties, delay is sought to be condoned.

3. Learned counsel Mr.Subodh Shah would oppose the application. It is contended that Applicant No.3 died during pendency of appeal and no steps were taken to bring her heirs on record which resulted into abatement of appeal as against the

Applicant No.3 in lower appellate court itself. Resultantly present second appeal filed by the appellant also becomes incompetent to the extent of Applicant No.3. The legal heirs have filed appeal alongwith other appellants without following due procedure of law.

4. Applicant No.3 died during pendency of appeal. The steps were not taken within stipulated period and hence appeal before the lower appellate court was abated to her extent. No steps were taken to set aside the abatement in time. Present appeal to the extent of deceased Applicant No.3 is incompetent. Besides that civil application does not show any explanation for condonation of delay. Abatement of the appeal due to the death of the party is a legal fiction, for which no independent order is required to be passed.

5. For the reasons stated above, I am not inclined to allow the application.

6. Civil application is rejected.

[SHAILESH P BRAHME, J.]