



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL APPLICATION NO.2008 OF 2025
IN
CIVIL REVISION APPLICATION NO.101 OF 2022**

**SAU SAVITA MAHESH WANJARI AND OTHERS
VERSUS
RAJESH SHANTILAL LALWANI AND OTHERS**

...
Mr. J. R. Shah, Advocate for the Applicants.
Mr. Girish Rane, Advocate for Respondents.

...
**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 17th MARCH, 2025.**

ORDER:-

1. The present application is filed by Revision Applicants with following prayers:

“A. The Hon’ble High Court may be pleased to condone the delay of 632 days for recalling of the order dated 28.04.2023, whereby the Civil Revision Application was dismissed against the Respondent No.2 and 3.

B. The Hon’ble High Court may be pleased to recall the order dated 28.04.2023, whereby the Civil Revision Application was dismissed against the Respondent No.2 and 3.

C. The Hon’ble High Court please to grant leave to amend the cause title of the Civil Revision Application by allowing the applicants to bracket the name of Respondent No.2 as deceased and bracketing the name of Mukesh Shantilal Lalwani, name of respondent no.1 allowed to be substituted to represent the Firm Anand Shanti Builders and Developers.”

2. Mr. Shah, learned Advocate appearing for the applicants submits that on 05.10.2020 original plaintiff no.2/present respondent No. 2, Mukesh Shantilal Lalwani expired during pendency of suit. The steps were taken to bring his legal

representatives on record of suit. Since application for bringing legal representatives in the original suit was not yet decided, present Civil Revision Application has been filed as per title shown in original suit. An application below Exhibit-184 is filed by original plaintiff no.1 in pending suit seeking amendment of plaint under Order VI Rule 17 of the Code of Civil Procedure claiming that deceased has executed Will and bequeathed his share of partnership. Mr. Shah would submit that when Civil Revision Application was listed before this Court on 28.04.2023, observing that no steps were taken to bring on record legal representatives of deceased respondent nos.2 and 3, Civil Revision Application came to be dismissed against them for want of steps.

3. Mr. Shah would further submit that infact respondent nos.1 to 3 instituted suit claiming rights of partnership firm over suit property. The respondent no.3 is partnership firm, who is made party through partner i.e. respondent no.2-Mukesh Shantilal Lalwani. The respondent no.1 is also one of the partner of firm. Therefore, on death of respondent no.2, respondent no.1 can represent respondent no.3-Firm being partner. If such amendment is permitted, proceeding in Civil Revision Application can be continued as against respondent nos.1 and 3. According to him, death of respondent no.2-Mukesh Shantilal Lalwani was inconsequential and dismissal of Revision Application against

respondent nos.2 and 3 for want of steps to bring legal representatives was inconsistent to spirit of provision under Order XXX Rule 4 of Code of Civil Procedure. He submits that Section 153 of the Code of Civil Procedure enables Court to permit amendment to cure defect or error in any proceeding in the suit, if such amendment is required for the purpose of determining real question or issue in such proceeding. In support of his contentions, he relies upon judgment of Supreme Court of India in case of ***Brij Kishore Sharma and Another Vs. Ram Singh and Sons and Others***¹ and judgment of this Court in case of ***Ashish Rajendra Malara Vs. Narayan Sonu Wani and Others***².

4. Per contra, Mr. Rane, learned Advocate appearing for respondent nos.1 to 3 vehemently opposes application by filing affidavit-in-reply. He submits that present application is misconceived in both facts and law, especially when an alternate and more appropriate remedy has not been exhausted. He submits that present application is inordinately delayed by 632 days. Inaction on the part of applicants bestowed certain rights in favour of respondents. The application sans sufficient cause for condoning exponential delay. The applicants were well aware about order dated 28.04.2023 and dismissal of Civil Revision Application against respondent nos.2 and 3 for want of steps. No explanation is tendered for long silence. The order has, therefore, attained

¹ (1996) 11 SCC 480.

² 2015 (6) Mh.L.J. 627.

finality. The applicants deemed to have accepted the order. Present application is nothing but attempt to camouflage failure of applicants to take suitable steps within reasonable period. The recalling of order dated 28.04.2023 would have devastated effect on the rights accrued in favour of respondents/plaintiffs. The application for recalling of order sans support of enabling provisions. Such a novel prayer cannot be entertained. In support of his contentions, he relies upon observations of Supreme Court of India in case of ***Rangubai Jagtap Vs. Sunderabai Jedhe***³ and ***Union of India and Anr. Vs. Jahangir Byramji Jeejeebhoy***⁴ to contend that application for condonation of delay cannot be dealt with in routine manner. The delay should not be excused as a matter of generosity. Rendering justice should not cause prejudice to the opposite party. Parties who have not been reasonably diligent in prosecuting the matter must suffer.

5. Having considered submissions advanced, first of all reference to original proceeding from which present Civil Revision Application arises would be necessary. The respondent nos.1 to 3 instituted Special Civil Suit No.66/2020 seeking declaration that sale deeds executed in favour of defendant nos.5 to 35 are null and void, since those have been executed without any authority. The suit is instituted in the name of two partners namely Rajesh

Lalwani and Mukesh Lalwani alongwith partnership firm namely

³ AIR 1965 SC 1794.

⁴ AIR 2024 SC 1884.

Anand Shanti Builders and Developers through partner Mukesh Lalwani. The genesis of claim in suit is based on rights of partnership firm in suit property. Essentially, no individual relief is claimed. Eventually, reasonable inference can be drawn that plaintiff nos.1 and 2 i.e. partners of firm are not claiming individual relief, but litigating for joint relief, being partners of plaintiff no.3-partnership firm. The defendants filed applications seeking rejection of plaint on various counts. Those applications are rejected. Therefore, individual Civil Revision Applications are filed assailing such orders before this Court.

6. The present Civil Revision Application is filed by some of the defendants. In this background, this Court, *prima facie*, holds that suit is governed by provisions of Order XXX of Code of Civil Procedure. In essence, in case of death of partner, Order XXX Rule 4 would govern proceeding. For ready reference Order XXX Rule 4 of Code of Civil Procedure is given hereunder:

“4. Rights of suit on death of partner.—(1)
Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872 (9 of 1872) where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.

(2) Nothing in sub-rule (1) shall limit or otherwise effect any right which the legal representative of the deceased may have

—
(a) to apply to be made a party to the suit, or

(b) to enforce any claim against the survivor or survivors.”

7. The Division Bench of this Court in case of ***Manohar Kashinath Vyawahare Vs. Dattatraya son of Krishnarao Pitale & Another***⁵ after considering scheme of Order XXX Rule 4 of Code of Civil Procedure observed as under:

“10. Purport and object of Rule 4 of Order XXX is to save protraction of litigation when a Firm is a party to suit, and suit can be legitimately continued if the legal heirs of deceased partners are not brought before the Court. This provision is an enabling provision and made to avoid protracting the suit or proceedings. Object of the rule is to dispense with impleadment, so that these steps do not come in the way of expeditious disposal. This provision cannot be used to deny rightful impleadment, when such impleadment does not defeat the purpose of the early disposal of suit or in itself can avoid further litigation.”

8. Similarly, Supreme Court of India in case of ***Suresh Kumar and others Vs. Baluram (d) through L.Rs. And another***⁶ observed in paragraph no.9 as under:

“A fair understanding of reading of the rule would make it clear that where two or more persons may sue or be sued in the name of a firm under the provisions of other rules of Order 30 and any such persons die, during the pendency of any suit, it shall not be necessary to join the legal representative’s of the deceased as a party to the suit.”

9. Similar view is reiterated by Supreme Court of India in case of ***Brij Kishore Sharma and Another*** (supra) and by this Court in case of ***Ashish Rajendra Malara*** (supra).

⁵ 2010 2 MhLJ 365.

⁶ 2009 2 MPLJ 198.

10. Considering the aforesaid exposition of law, in the case of the death of a partner in a proceeding instituted in the name of a partnership firm, it is not necessary to bring legal representatives of the deceased partner on record as parties to the suit. However, legal representatives may, on their own volition, apply to be made parties to the suit.

11. In light of aforesaid legal position, dismissal of proceeding against respondent nos.2 and 3 for want of steps to bring on record legal representatives would not be sustainable. However, defect can be cured by exercising powers of this Court under Section 153 of Code of Civil Procedure. For that purpose, order dated 28.04.2023 needs to be recalled and application needs to be allowed in terms of prayer Clauses (B) and (C). Although prayers are opposed on the ground of delay, this Court holds that no prejudice would be caused to respondents, since order dated 28.04.2023 itself cannot be perpetuated being inconsistent with legal position. Hence, following order:

ORDER

a. Civil Application is allowed in terms of prayer Clauses (A), (B) and (C).

(S. G. CHAPALGAONKAR)
JUDGE