

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**942 CIVIL APPLICATION NO. 11228 OF 2015
IN SA/75/1995**

WITH

**CIVIL APPLICATION NO. 11229 OF 2015
IN SA/75/1995**

WITH

**CIVIL APPLICATION NO. 11230 OF 2015
IN SA/75/1995**

WITH

**CIVIL APPLICATION NO. 11232 OF 2015
IN SA/75/1995**

AND

AND UNREGISTERED CIVIL APPLICATION DATED 01.09.2015

**VISHWANATH BHAGWAN JADHAV AND OTHERS
VERSUS
HARIBHAU LAXMAN CHOUDHARI LRS KASHABAI AND OTHERS**

...
Advocate for Applicants : Mr. Anant R. Devakate
Advocate for Respondent Nos. 1-A to 1-G : Mr. A. S. Barlota
Advocate for Respondent Nos. 2-A to 2-F : Mr. M.K.Deshpande
...

CORAM : ABHAY J. MANTRI, J.

DATE : 16.09.2025.

PER COURT :

1. Unregistered Civil Application dated 01.09.2015 regarding bringing the names of the applicants on record as legal representatives of appellant No. 1, Mahadu Ganu Jadhav, be registered.
2. The applicants, being the legal representatives of original appellant No. 1, have moved Civil Application No. 11230 of 2015 to condone the delay of 4999 days in filing the application to set aside the

abatement order dated 02.11.2015 against appellant No. 1. Similarly, on the same date, 01.09.2015, the applicants filed an application to bring their names on record as legal representatives of appellant No. 1. It seems that said application is not registered, though it was filed on record.

3. They have also filed Civil Application No. 11228 of 2015 to condone the delay in filing the application for restoration of Second Appeal, which was dismissed on 22.04.2009 for non-filing of the paper book within the stipulated time.

4. Learned Advocate for respondent No. 1-A to 1-G has strongly objected to the condonation of the delay, and the learned Advocate for respondent Nos. 2-A to 2-F has also strongly opposed all these applications, contending that the applicants have not stated sufficient cause for condonation of delay. They further argue that despite the pendency of the appeal, the applicants have sold part of the suit properties to third persons, thereby creating a multiplicity of litigation. They have sold part of the properties without any title to third persons, thereby creating a multiplicity of litigation. Therefore, they urged that the applicants' conduct can be considered while deciding these applications. The applicants have no bona fide intention but were guilty of laches in filing these applications; therefore, they are not entitled to relief as prayed.

5. Learned Advocate for respondent Nos. 1-A to 1-G, to buttress his submissions, has relied upon the judgment in **MAJJI SANNEMMA @ SANYASIRAO VS. REDDY SRIDEVI & ORS, (2021) 9 S.C.R. 476** and submitted

that in view of the mandate laid down in the judgment above, the applicants are not entitled to the relief as claimed, hence he urged for rejection of the applications.

6. In response, the learned Advocate for the applicants submitted that the applicants are ready to pay the costs for the delay caused in filing these applications; however, they did not have any ill intention to file them at a belated stage. It is contended that the appeal was admitted, but the applicants had no knowledge of its pendency, and therefore, a delay has occurred. The applicants are ready to pay any costs to condone the delay.

7. Having considered the rival contentions of the parties and on perusal of the record, at the outset, it appears that by order dated 27.03.1996, the appeal was admitted, and it was pending for the supply of the paper book by the original appellants. However, till 10.07.2008, the appellants had failed to supply a paper book and a decree form within the stipulated time; therefore, it was listed before the Court on 10.07.2008, under the category of non-compliance with the Practice Note No. 20. This Court, by Common Order dated 10.07.2008, directed the appellants to supply typed copy of the paper book within four weeks. However, the paper book and its copy were not provided within four weeks, and the matter was listed before the Court for dismissal, for want of compliance with the order. Despite the said order, none of the appellants has complied with the same; therefore, the matter was listed before the Court on 22.04.2009, and on that date, the appeal was dismissed for non-supply of typed paper book to the

parties.

8. It is also evident from the record that the application for bringing the names of the applicants on record as legal representatives of appellant No. 1 has been filed by the applicants, however the same was not registered; that appellant No. 1, Mahadu Ganu Jadhav, died on 22.09.2001; likewise, the applicants were not aware of the pendency of the 2nd Appeal. They came to know about the pendency of the 2nd Appeal, for the first time, after receipt of summons/notice in Special Civil Suit No. 341 of 2014, and thereafter they obtained certified copies and filed these applications.

9. The application No. 11228 of 2015 reveals that appellant No. 2 Narayan Ganpat Jadhav, who expired on 08.10.2012, and his legal representative failed to bring them on record. Therefore, the appeal is abated against him.

10. It is also evident from the affidavit-in-reply filed on behalf of respondent No. 2-A to 2-F that the original appellant No. 2 Narayan has sold a part of the property in favour of one Krupavartibai on 25.02.2010. Applicant Nos. 1 to 4 and 7 to 8 have also sold a part of the suit property on 10.06.2010 in favour of one Chandrakalabai Jadhav and Safiya Yasin. The record shows that in 1976, the original respondents Nos. 1 and 2 filed a suit bearing RCS No. 134 of 1976 against the appellants herein for perpetual injunction. Similarly, the original appellants have sought relief of possession in respect of the disputed fields. The appellant's suit was dismissed, and the First Appellate Court confirmed the order passed by the trial Court.

Likewise, the trial Court allowed the suit for injunction filed by the original respondent, which the Appellate Court reversed and both suits were dismissed. Against the said order, this Second Appeal was filed, and accordingly, the appeal was admitted and was pending, but for non-supply of the paper book, it was dismissed, i.e. on technical grounds.

11. Having considered the facts mentioned above, it is revealed that in 2001, the original appellant No. 1 died, and thereafter, in 2008, the appeal was dismissed for non-supply of the paper book. The said fact was not known to the legal representatives of the original appellant No. 1, and therefore, the filing of these applications was delayed.

12. It is pertinent to note that despite the filing of these applications in the year 2015, they have been pending to this date, and none of the parties have moved these applications. It is worth noting that the appellants have not circulated these matters since 2015, nor have they taken any steps to bring their names on record or restore the appeal/s, but they have only filed applications. The intention of the applicants can be gathered from their conduct for not taking steps, which shows that they want to protract the matter by keeping it lingering, for reasons best known to them.

13. It is to be noted that since 2017, respondent No. 1 or his legal representatives failed to file a reply to all these applications, indicating that they have no grievance about the contents of these applications. Therefore, they could not have filed their reply.

14. The facts in *MAJJI SANNEEMMA* (Supra) and facts in the case at

hand are distinct, as in *MAJJI SANNEMMA*, there was delay in filing the Second Appeal, however, in the case at hand the Second Appeal was admitted but delay caused for bringing the legal representatives of the appellant No. 1 on record, as well as to restore this appeal and therefore, what has been observed in the decision in *MAJJI SANNEMMA* (supra) is hardly of any assistance to the learned Advocate for respondent No. 1 in support of his contention.

15. The upshot of the above discussion, I am of the view that the appeal was admitted in 1996, and it was pending for non-compliance with the filing of the paper book, and it was dismissed for non-compliance with the same. Therefore, in my view, the appeal needs to be restored. Similarly, it appears that applicants were unaware of the pendency of the Second Appeal and thus, could not file an application to bring their names on record within time. At the same time, the Court cannot overlook the conduct of the applicants for keeping these applications pending in the Court for the period of 10 years, which indicates that the applicants want to protract the matter, which was kept pending by filing these applications, and on that count, they are liable to pay heavy costs.

16. Apart from that, during the pendency of the proceedings, they have sold part of the properties to third persons and thereby created third-party rights and interests therein. Due to said facts, it creates complications in the matter and will increase the multiplicity of litigation, and in such a situation, they are liable to pay heavy costs.

17. In view of the above discussion, I am of the view that all applications need to be allowed, subject to heavy costs. If applications are not permitted, applicants will certainly be deprived of their valuable right to contest the appeal on its merits. On the other hand, if applications have been allowed, it would not prejudice the other side's rights.

18. As a result, all these applications are allowed, subject to costs of Rs. 1,00,000/—(One Lakh). Applicants are directed to deposit the costs in the Court by 13.10.2025, failing which all these applications shall be dismissed without reference to the Court, as the matter is old. On depositing the said costs, an amount of Rs. 35,000/- each will be paid to the legal representatives of respondent Nos. 1 & 2, respectively and the remaining amount of Rs. 30,000/- will be credited to the Government.

19. On deposit of costs only, the appeal be restored to its original position and the appellants be permitted to bring their names on record. It is made clear that after deposit of costs, the applicants shall bring their names on record and supply copies of the amended appeal memo to the respondents by 17.10.2025, failing which this order shall be cancelled.

20. List the matter on 14.10.2025.

21. It is made clear that no further time will be granted for the depositing of costs, as the matter is an old one.

(ABHAY J. MANTRI)
JUDGE