



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

**CIVIL APPLICATION NO. 4149 OF 2024
WITH
CIVIL APPLICATION NO. 4150 OF 2024
IN
FIRST APPEAL NO. 426 OF 2007**

Anil Ramkishan Rathod
Since deceased through his L.Rs.
Shashikala Anil Rathod and others .. Applicants

Versus

Meera Rajendra Desale and another .. Respondents

Shri Anil H. Kasliwal Advocate for the Applicants.
Shri Rajendra K. Temkar, Advocate for the Respondent Nos. 1
and 2.

**CORAM : SHAILESH P. BRAHME, J.
DATE : 11TH MARCH, 2025.**

FINAL ORDER :

. These applications are filed for setting aside abatement, bringing the legal heirs of deceased appellant on record and for restoration of first appeal. There is delay of more than three years in presenting applications.

2. The original appellant is owner of the vehicle. He has challenged judgment and award passed by the Tribunal in the first appeal. The first appeal was admitted. Appellant had deposited an amount of Rs. 3,00,000/- and out of that Rs.

2,00,000/- was permitted to be withdrawn, albeit, claimants could not withdraw the amount immediately.

3. In the mean time on 05.08.2020 original appellant Anil Ramkishan Rathod died. His lawyer had shifted abroad and the death of the appellant was not taken cognizance of and no steps were taken. Ultimately matter was abated on 30.08.2022. In the execution only the heirs of the original appellant learnt about dismissal of the first appeal and thereafter present applications are filed.

4. Learned counsel for the applicants Mr. Anil H. Kasliwal submits that the delay is not intentional. Explanation of delay is adequately mentioned in paragraph Nos. 6 to 9 of the civil applications. It is further submitted that, respondents/claimants were permitted to withdraw an amount of Rs. 5,09,512/-, which was including interest so far. He submits that no prejudice would be caused to the respondents. The cause of action survives against the legal heirs of the original appellant.

5. Mr. Temkar, learned counsel appearing for the respondent Nos. 1 and 2 vehemently opposes both the applications. He would submit that there is very casual approach of the applicants. The explanation for delay is not convincing. He would submit that the execution for an amount of more than Rs. 9,00,000/- is pending. The delay is inordinate and there is no reason to condone the delay.

6. The original appellant had died on 05.08.2020. Applicants have given reasons as to why the steps could not be taken for bringing heirs of the deceased appellant on record. The lawyer engaged by the deceased appellant ceased to practice in High Court. Heirs of the appellant learnt about dismissal of the appeal and abatement order only after execution was filed by the respondents. I find that reasons stated in paragraph Nos. 5 to 9 are convincing. There can be no reason to doubt the explanation tendered by the applicants. The matter needs to be heard on merits instead of technicalities of delay.

7. The cause of action survives against heirs of the original appellant. The respondents received Rs. 5,09,512/- along with interest after abatement of appeal. I cannot be oblivious of the fact that execution for an amount more than Rs. 9,00,000/- is still pending. Under these circumstances the ends of justice would be met in allowing both these application on condition of deposit of Rs. 1,00,000/- before the M. A. C. T. Ahmednagar within a period of four (04) weeks from today. Simultaneously, I also propose to permit the respondents to withdraw the amount, which is to be deposited before the Tribunal.

8. I, therefore, pass following order :

O R D E R

I Both the civil applications are allowed.

II The delay caused in filing both civil applications is condoned.

III Abatement order of the first appeal passed on 30.08.2022 is quashed and set aside.

IV Applicants be brought on record as legal heirs of deceased appellant by carrying out necessary amendment within a period of two (02) weeks from today.

V Applicants shall deposit an amount of Rs. 1,00,000/- (Rs. One Lakh only) before the M. A. C. T. Ahmednagar within a period of four (04) weeks from today. On deposit of the amount by the applicants, the respondents shall be at liberty to withdraw the same.

VI First Appeal No. 426 of 2007 is restored to its original position along with pending civil applications therein.

[SHAILESH P. BRAHME J.]

bsb/March 25