



{1}

CA 11132.24.odt

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL APPLICATION NO. 11132 OF 2024
with
CIVIL APPLICATION NO. 11133 OF 2024
with
CIVIL APPLICATION NO. 13600 OF 2018
IN SECOND APPEAL NO. 378 OF 2001.**

**SUBHADRABAI DHANAJI GHOLAP LR s AND OTHERS
VERSUS
ANUSAYABAI BAJIRAO BADADE AND OTHERS.**

...

Advocate for applicant : Mr. Subodh P. Shah
Advocate for respondent : Mr. H.V. Tungar.

**CORAM : S.G. CHAPALGAONKAR, J.
DATE : 21st APRIL, 2025.**

P.C. :-

1. By these applications, the applicants seek to bring on record LRs of deceased respondent No.2 Dadarao Bajirao Badade, deceased respondent No.3 - Sahebrao Bajirao Badade and deceased respondent No.6 Kashibai Masu Khote. The applicants are also seeking to condone delay caused in filing the applications for setting abatement and bringing Lrs on record.

2. Mr. Shah, learned advocate for applicants submits that present second appeal is filed challenging the judgment and decree passed in RCS No. 142 of 1976 and RCA No. 108 of 1991. The second appeal has been admitted by this court vide order dated 22.7.2009 on grounds B,C, D and E appearing in memo of appeal.

3. Mr. Shah submits that due to communication gap between the applicants and advocate, delay has been caused in filing appeal. Mr. Shah would submit that respondent No.2 Dadarao Bajirao Badade,

respondent No.3 Sahebrao Bajirao Badade and respondent No.6 Kashibai Masu Khote were brought on record during pendency of suit being LRs of Bajirao Ramrao Badade. Respondent No.1 Anusaya Bajirao Badade is already on record. She represents original defendant No.2 Bajirao Badade as well as his Legal representative. Therefore, proceeding in the suit does not abate. Respondent No.1 continues to represent Bajirao Ramrao Badade or his LRs.

4. He would submit that in such a situation, although there is delay in bringing LRs on record, there is no difficulty in allowing the application and bringing LRs on record by condoning delay. It would not cause any prejudice to the respondents, nor right is accrued in their favour which would be disturbed. In support of his contentions, he relies upon judgment of the Supreme Court of India in the matter of *N. Balakrishnan vs. M. Krishnamurthy reported in (1998)7 SCC 123*, and judgment of this court *Baburao Ganpatrao Shirole since deceased through LRs vs. Deccan Education Society, Pune and others reported in 2013(1) Mh.L.J. 233*;

5. Per contra, Mr. Deshpande, learned advocate for respondents seriously oppose the applications by filing affidavit in reply. He submits that there is inordinate and exponential delay which can not be pardoned. Delay cannot be condoned in absence of sufficient cause being made out. Whether any right is accrued in favour of the respondents can be examined lateron. However, in absence of sufficient cause, inordinate delay cannot be condoned.

6 . Having considered submissions advanced, it can be observed that in C.A. No. 11133 of 2024 there is a delay of 1295 days, whereas, in

CA No. 11132 of 2024 there is delay of 1296 days and in C.A. NO. 13600 of 2018, there is delay of 6221 days.

7. It is the contention of applicants that they are agriculturists and labours, did not know consequences of death of any party to litigation and unaware about the steps to be taken in the proceeding. They were given understanding that final hearing of the appeal would take 10 to 15 years. Therefore, they were not in contact with the advocate. In February 2018, when they contacted with the advocate, and inquired about the status of appeal, during conversation they informed advocate about death of respondents. Lateron, steps are taken and present applications have been filed.

8. It is true that explanation tendered does not give reasons for each and every day but such explanation is possible looking to the large number of pendency of second appeals, which are kept sine-die after admission. In the result, the applications deserve to be allowed by compensating the respondents by way of costs. Hence, following order :-

O R D E R

[I] Applications are allowed subject to payment of costs of Rs. 3,000/- each, to the respondents. Costs to be paid/or deposited with Registry of this court within a period of four weeks. Non payment of costs will entail dismissal of applications without further reference to the court.

[ii] Civil applications stand disposed of.

Grt/-

[S.G. CHAPALGAONKAR, J]