



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
964 CIVIL APPLICATION NO. 13074 OF 2023
IN SA/953/2006**

JYOTI KRUSHNA SINGADE L.RS. NAGURBAI
JYOTIREAM SINGADE AND ORS
VERSUS
LAXMAN GOROBA MANE AND ORS

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Advocate for the Applicant : Mr.Shubham S.Kote h/f.Mr.Hon Ashwin Vinayak

Advocate for Respondent No.1 :Mr. R.K. Ashtekar

Advocate for Respondent Nos.3 to 5 : Mr. R.K. Ashtekar

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CORAM : SHAILESH P. BRAHME, J.

DATE : 19.08.2025

PER COURT :

. Heard both sides.

2. Applicants have filed composite applications for condonation of delay, setting aside abatement and bringing legal heirs of Applicant No.1/Jyoti Krushna Singade, Respondent No.3/Kaushylayabai Trimbak Pawar and Respondent No.6/Ayodhyabai Prakash Jadhav on record.

3. It is stated that Applicant No.1/Jyoti died on 16.08.2023. Respondent No.3/Kaushylayabai died on 11.02.2016 and there is delay of 2723 days in taking steps as against her. Respondent No.6/Ayodhyabai died on 09.05.2002 resulting into delay of 7749 days for taking steps as against her.

4. Learned counsel for the applicants submits that death of

Respondent Nos.3 and 6 were not made known to them. They were residing at different places. The delay is not intentional and deserves to be condoned.

5. *Per contra*, learned counsel Mr.Ashtekar would rely upon the affidavit-in-reply to demonstrate that the delay is inordinate and applicants are casual in filing application. He would submit that such type of composite application is not tenable. It is further contended that the appeal was abated long back not only as against deceased respondents but in its entirety. For that purpose reliance is placed on the order passed by co-ordinate bench dated 07.12.2021 which is at Exhibit-R1. It is further submitted that in second appeal, order was passed on 12.04.2022 and it was brought to the notice that Respondent No.6 was no more. Despite that no steps were taken. It is submitted that application is liable to be rejected and entire second stands abated.

6. I have considered rival submissions of the parties. There is no material on record to show that deceased Respondent Nos.3 and 6 are residents of the same place at which applicants are residing. A couple of heirs they are shown to be residents of Tq. Sonagaon.Dist.Osmanabad. The respondents did not place on record the compliance of Order 22 Rule 10(A) of C.P.C.

7. I have gone through order dated 12.04.2022 which shows that death of Respondent No.6/Ayodhyabai was disclosed. Present application is filed on 22.10.2023 after lapse of more than one year. Learned counsel Mr.Ashtekar appearing for the respondents is right

to the extent that delay is inordinate and there are lapses.

8. I have gone through the order relied upon by the respondents which is at Exhibit-R1. In the present case suit was filed for declaration of ownership and possession. It was decreed by the trial court which is confirmed by lower appellate court. Defendants are before this Court in the second appeal and death of Respondent Nos.3 and 6 are under consideration who are the decree holders. It has not been pointed out that the decree passed in the present case can not be executed and entire appeal needs to be abated. No case is made out to demonstrate that it would be a case of contradictory decrees. I am unable to extend the benefit of the judgment to the respondents.

9. Second appeal is admitted and pending for final hearing. The reasons for condonation of delay are not elaborate. However, there is reason to infer that applicants were not aware of death. The substantive rights of the parties would prevail if pitted against technical objections. I propose to adopt practical approach in condoning the delay by imposing cost.

10. Civil application is allowed in terms of prayer clause 'A' and 'B' subject to payment of cost of Rs.20,000/- to the Respondent Nos.3 to 6 and the cost shall be paid to them or deposited in this Court within period of three (03) weeks.

[SHAILESH P BRAHME, J.]

vsj..