



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

**CIVIL APPLICATION NO. 7940 OF 2024
IN
CIVIL APPLICATION NO. 1742 OF 2024
IN
SECOND APPEAL NO. 548 OF 1989**

Mohiuddin Hussiuddin
Since deceased through L.Rs.
Bilaquiesbegum and others .. Applicants

Versus

Muthuappa Hauappa Shiwale
Since deceased through L.Rs.
Kusumbai died L.Rs.
Shivdas and others .. Respondents

Mrs. A. N. Ansari, Advocate for the Applicants.
Shri V. S. Solshe, Advocate for the Respondent Nos. 1-B and 1-C.

**CORAM : SHAILESH P. BRAHME, J.
DATE : 24TH JUNE, 2025.**

FINAL ORDER :

. Heard Mrs. Ansari, learned counsel for the applicants and Mr. V. C. Solshe, learned counsel for the respondent Nos 1-B and 1C. None appears for the respondent No. 2, though served.

2. Present application is for condonation of delay, setting abatement and bringing heirs of the deceased respondent NO. 2/Matnoddin Hussouddin on record.

3. It is submitted by the applicant that the delay is not intentional. For the reasons stated in para Nos. 3 to 5 of the application the delay is caused. It is further submitted that cause of action survives against heirs of the deceased respondent No. 2. They are necessary parties.

4. Learned counsel Mr. Solshe appearing for the respondents submits that applicant No. 1 is real brother of the deceased respondent No. 2. It cannot be conceived that death of the respondent No. 2 was not within his knowledge. There is huge delay. Application is liable to be rejected.

5. I have considered rival submissions of the parties. Second appeal preferred by the applicant has not been restored, however in attempting to restore the same, applicants are required to face these technicalities. Applicant No. 1 and the respondent No. 2 are brothers. In all probabilities, due to strained relations consequences of death might have been overlooked. In the present case, heirs of the deceased are necessary parties as cause of action survives against them.

6. It is desirable to allow the present application by imposing cost. The civil application is allowed in terms of prayer clauses "B" and "C" on condition that the applicants shall pay cost of Rs. 3,000/- (Rs. Three thousands only) to the High Court Advocate's Bar Association Aurangabad within a period of three (03) weeks from today. Necessary amendment to be carried out within a

period of two (02) weeks from today. The civil application is disposed of.

[SHAILESH P. BRAHME J.]

bsb/June 25