

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 492 OF 2025
WITH
INTERIM APPLICATION NO. 6966 OF 2025
WITH
CIVIL APPLICATION NO. 14 OF 2025
IN
APPEAL FROM ORDER NO. 492 OF 2025**

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Rajendra Vitthal Arbuj And Ors. ... Appellants

Vs.

Vimalbai Chimanrao Arbuj (Decd.) Thru. Legal Heirs And Ors. ... Respondents

Mr. Prasad Dani, Senior Advocate a/w Shailesh Chavan a/w Narayan Dhokale for the Appellants.

Mr. Surel S. Shah, Senior Advocate a/w Chaitanya B. Nikte a/w Prajit S. Sahane for Legal Heirs of Respondent No.2.

Mr. Hrishikesh Avhad for Respondent Nos.3(ii), 3(iii) and added Respondent No.3(i)(a).

Mr. Umesh Pralhad Arbuj- Respondent No.3(ii), Present.

Mr. Rupesh Pralhad Arbuj- Respondent No.3(iii), Present.

CORAM : GAURI GODSE, J.

DATED : 3rd SEPTEMBER 2025

ORDER:

1. This appeal is taken up for final disposal at admission stage.

2. Learned counsel appearing for respondent nos.3(ii) and 3(iii) waives notice for final disposal of the appeal at admission stage. He points out that respondent no.3(i) has expired. He submits that respondent no.3(i) is mother of respondent nos.3(ii) and 3(iii). He submits that respondent no.3(i) is also survived by one daughter- Vaishali Prashant Bagade.

3. Learned senior counsel for the appellants seeks leave to amend the appeal to bring on record the name of Vaishali Prashant Bagade as heir and legal representative of deceased respondent no.3(i) alongwith respondent nos. 3(ii) and 3(iii). Leave granted to show respondent no.3(i) as deceased through heirs and legal representative as respondent nos.3(ii) and 3(iii) alongwith Vaishali Prashant Bagade as respondent no.3(i)(a).

4. This appeal is preferred by the heirs and legal representatives of the original plaintiff to challenge the order rejecting their respective applications for setting aside abatement and bringing on record their names in place of the deceased sole plaintiff. These applications are filed in the first appeal challenging dismissal of the suit for partition and separate possession. The petitioners had also prayed for delay condonation of approximately 800 days in filing the applications. All these applications are rejected by the impugned

order.

5. The deceased-original plaintiff filed a suit for partition and separate possession in the year 2001. The suit was dismissed on 5th February 2004. The First Appeal was filed in this Court which was admitted on 14th September 2004. During the pendency of the appeal, the interim application was decided by directing that if any third party rights were created by the respondents, the same would be subject to final outcome of the appeal. Thereafter, in view of the increase in the pecuniary jurisdiction, the first appeal was transferred to the District Court some time in November 2017. According to the appellants, notice of the transfer of the appeal was served upon them on 7th August 2018. The sole plaintiff expired on 25th February 2016 when the first appeal was pending in this Court. After notice of the transfer was served upon the petitioners they filed application some time in August 2018 for setting aside the abatement by condoning the delay and bringing their names on record as heirs and legal representatives of the deceased sole plaintiff.

6. Learned senior counsel appearing for the appellants submits that in the applications, the appellants contended that the appeal preferred against the dismissal of the suit was looked after by the

deceased sole plaintiff through his advocate. He points out that in the application a specific ground is raised that the heirs and legal representatives of the sole plaintiff were not aware about the actual process and steps to be taken in the appeal. However, after the notice of the transferred appeal was served upon the appellant they appeared in the Court and took immediate steps for bringing their names on record. He submits that the reply was filed by respondent no.2 to oppose this application. However, vague objections were raised to oppose the condonation of delay.

7. Learned counsel for the appellants points out the reasons recorded in the impugned order and submits that the applications are rejected on hyper-technical grounds that it was necessary for the appellants to contact their advocate engaged by their father and they cannot raise a ground that they were unaware about the litigation. He points out that the appellants have not contended that they were unaware about the litigation. However, they have raised a ground that since the sole plaintiff alone was looking after the litigation, they were unaware about the actual steps and compliance to be made. He therefore submits that the applications could not have been rejected on a hyper-technical ground, as the substantive rights of the appellants to seek partition and separate possession is affected in view of the impugned order.

8. Learned senior counsel for the appearing for the heirs and legal representatives of respondent no.2 opposes the applications for bringing the petitioners on record by condoning the delay. He submits that though aware about the litigation, the appellants failed to take any steps to bring on record their names when the appeal was pending before this Court. He, therefore, submits that in the absence of any sufficient and justifiable grounds, the learned District Judge has rightly rejected the applications.

9. Learned counsel appearing for the heirs and legal representatives of respondent no.3 supports the contentions of the appellants and has no objection, if the appellants are brought on record as prayed.

10. I have perused the papers of the appeal. The initial dates and events regarding filing of the first appeal and transfer of the appeal to the District Court are not in dispute. The objection raised on behalf of respondent no.2 appears to be with regard to not taking any steps when the appeal was pending in this Court. The reasons for condonation of delay are opposed on the ground that the reasons given for not taking steps cannot be accepted as sufficient grounds.

11. The learned Judge has rejected the applications by observing

that none of the appellants found it necessary to approach the advocate engaged by the deceased sole plaintiff in the High Court. The learned Judge has observed that since it is not the case of the appellants that they were unaware about the litigation, the reasons that they were not aware about the actual process and compliances to be made cannot be accepted as a reasonable ground. The learned Judge has therefore refused to take a liberal approach for condonation of delay by observing that such approach would render the provision of law redundant and inoperative.

12. I have carefully perused the reasons in the applications filed by the appellants. The appellants have fairly stated that they approached their advocate after the transfer notice was served upon them. The appellants have not raised any ground regarding the pendency of the appeal in this Court. The reasons for condonation of delay and for bringing their names on record is very specific that they were unaware about the actual process as the litigation was taken care by the sole deceased plaintiff through the advocate engaged by him. There is no dispute that the notice of the transferred appeal was served upon the appellants on 7th August 2018. The applications are thereafter immediately filed within few days. However, in view of the date of death of sole plaintiff as 24th February 2016, there is a delay of more than two years. If the date

of the notice served upon the appellants is taken into consideration, the appellants have taken immediate steps to file the applications in the appeal transferred before the District Court.

13. Considering these facts and the dates pleaded by the appellants, the reasons for condonation of delay are acceptable. I see no reason to disbelieve the grounds raised for condonation of delay. The view taken by the learned Judge in the impugned order would amount to a hyper-technical approach, by completely ignoring that the substantial rights of the appellants would be affected, if the applications are rejected. It is a well-settled legal principle that while considering the prayer for condonation of delay a liberal approach is required to be taken unless any malafides are alleged against the party seeking condonation of delay. The aspect of prejudice caused to the party applying for delay condonation is also to be considered as a relevant factor. The learned Judge has misconstrued the concept of liberal approach required to be taken while deciding an application for condonation of delay to bring on record the names of heirs and legal representatives of a deceased party.

14. In the facts of the present case, the reasons given for condonation of delay are justifiable and acceptable. The applications cannot be rejected on a hyper-technical ground as

recorded in the impugned order. Considering the reasons stated in the applications filed by the appellants, the delay is sufficiently explained and thus, the applications deserve to be allowed.

15. The appeal is, therefore, allowed by passing the following order:

ORDER

(i) The impugned order dated 17th September 2018 passed by the District Judge 5, Pune below applications at Exhibits 19, 30, 21 and 31 in Regular Civil Appeal No.632 of 2017 is quashed and set aside.

(ii) The applications at Exhibits 19, 30, 21 and 31 are allowed. The delay in filing the applications is condoned. Abatement is set aside.

(iii) The names of the appellants be brought on record in place of the deceased appellant (plaintiff) in Regular Civil Appeal No.632 of 2017. The appellants shall be permitted to carry out necessary amendment in Regular Civil Appeal No. 632 of 2017, within four weeks from the date of production of authenticated copy of this order before the District Court.

(iv) The appellants shall be permitted to carry out relevant

amendment in Regular Civil Appeal No.632 of 2017, within four weeks from the date of production of authenticated copy of this order before the District Court for showing the deceased respondents through their heirs and legal representatives as per the title of this appeal.

(v) Interim Application No. 6966 of 2025 is allowed to be withdrawn with liberty to make prayer in the pending suit before the District Court.

(vi) Civil Application No. 14 of 2025 is disposed of as infructuous.

16. Learned advocate for the appellants is permitted to carry out amendment forthwith in the Court, to amend the title of this appeal for showing respondent no.3(i) as deceased represented through respondent no.3(ii) and 3(iii) Vaishali Prashant Bagade be brought on record as respondent no.3(i)(a).

17. The Appeal is allowed in the aforesaid terms.

(GAURI GODSE, J.)