

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2181 OF 2024
IN
FIRST APPEAL NO.823 OF 2015

Mahendra Bhausahab Pawar ... Applicant
In the matter between:
Mahendra Bhausahab Pawar ... Appellant.
Versus
Balasaheb Bhausahab Pawar and Anr. ... Respondents.

Mr. Ganesh Bhujbal for the Applicant.
Mr. Rajesh Kanojia a/w. Ms. Prachi Pawar i/by Res Juris for Resp. No.2.

Coram : Sharmila U. Deshmukh, J.

Date : March 05, 2025

P.C. :

1. Interim Application has been preferred for bringing on record the legal heirs of the deceased-Respondent No.1 and for setting aside abatement.
2. Office noting indicates that the proposed-Respondents are duly served. Today, none appears for the proposed-Respondents.
3. Learned counsel appearing for the Applicant submits that the judgment which has been challenged in this case was delivered on 5th September, 2014 and the Appeal came to be filed in the year 2015. He further submits that thereafter, the Appeal was not listed and came up for hearing in the year 2020. He submits that the notices came to be issued in 2020, when the Bailiffs remark showed

that the Respondent No.1 has expired. He submits that it is subsequently that the Advocate for the Applicant made necessary inquiry with the instructing lawyer and received information about the legal heirs of the deceased Respondent No.1 and hence, there is delay of about 6 years and 335 days caused in preferring the Appeal.

4. It cannot be disputed that the Appeal is of the year 2015 and since then is pending admission. The Application specifically pleads that the Appeal came to be listed in the year 2020 at which point of time, the notice which was issued as a procedural aspect, was returned with the Bailiffs remark that the Respondent No.1 is expired. It is only subsequently that the Advocate for the Applicant made necessary inquiries with the instructing Advocate and became aware of the death of Respondent No.1. As there is absolutely no information which was conveyed to the Advocate for the Applicant, no timely steps could be taken for bringing on record the legal heirs of Respondent No.1. As such, there is sufficient explanation for delay of 6 years and 335 days caused in preferring the Application and therefore, the delay is condoned and the abatement is set aside. Interim Application stands allowed. Amendment to be carried out within a period of two weeks.

5. List the First Appeal on **19th March, 2025**, under the caption for 'admission'.

[Sharmila U. Deshmukh, J.]