



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 13440 OF 2024
IN
FIRST APPEAL st. NO. 21581 OF 2010

Johrabi Munir Saudagar
and Others.

...Applicants.

In the matter between :
Johrabi Munir Saudagar
and Others.

...Appellants.

Versus

Arthur J. Dsouza and Others.

...Respondents.

Mr. J. B. Mishra and Mr. Rupesh Dubey for the Applicant/appellants.
Mr. Pierre Fernandes i/b Ivor Feter D'cruz for the Respondent No. 1 to 3.

Coram : Sharmila U. Deshmukh, J.

Date : March 17, 2025.

P. C. :

1. Interim Application has been preferred to recall order of 26th August 2024 passed by this Court as regards abatement of Appeal against the Respondent No.1 and for bringing on record the legal heirs of deceased the Respondent No.1 and 3 and for condonation of delay caused in filing the Interim Application.
2. Learned Counsel appearing for the Applicant submits that though the Advocate for Appellant/Applicant was informed about the

death of Respondent No.1 by the Advocate for the Respondent No.1 in the year 2021, it was during Covid pandemic and inadvertently the office of Advocate on record for the Appellant failed to take timely steps for bringing on record the legal heirs of deceased Respondent No.1 and therefore the order of abatement came to be passed. He would further submit that Advocate on record for the Appellants was being instructed by Applicant No.2, who suffered a paralytic attack and therefore there was communication gap between the Advocate on record and the Applicant No.2 which led to further delay in taking out necessary Application. He would submit that in the suit filed on the original side of this Court between the same parties, legal heirs of the Respondents were permitted to be brought on record by imposing cost.

3. Learned Counsel appearing for the legal heirs of Respondent No.1 would object to the Application and would submit that despite the Advocate on record being informed about the legal heirs of deceased Respondent No.1 on 12th March 2021, no steps were taken and therefore Appeal proceedings have abated as regards Respondent No. 1.

4. I have considered the submissions and perused the record.

5. The Respondent Nos.1 and 3 expired during the pendency of Appeal and as far as the Respondent No.1 is concerned, the Advocate

on record for the Respondent No.1 had informed the Advocate on record for the Appellant by communication dated 12th March 2021 about the death of Respondent No.1 and also submitted the details of legal heirs. It is the specific case of learned Counsel appearing for the Appellant that inadvertence has taken place in his office and the same is not attributable to the Applicants. For the default on the part of Advocate, litigant cannot be made to suffer particularly when the delay can be compensated by imposing cost as has already been done in the other proceedings by order of 4th October 2024.

6. As far as the Respondent No.3 is concerned, legal heirs are present in Court and are not represented by any Advocate. Applying the same discretion which was applied by order of 4th October 2024 in the proceedings on original side of this Court, Interim Application is allowed subject to cost of Rs.15,000/-, to be paid to Kirtikar Law Library within a period of two weeks from today.

7. Interim Application is allowed. Amendment to be carried out within a period of three weeks from today.

[Sharmila U. Deshmukh, J.]