

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 15396 OF 2024.

IN

FIRST APPEAL NO. 811 OF 1993.

Rameshwar N. Dahate

...Applicant.

Versus

Ravindra Vasat Kambli and Another

...Respondents.

Mr. Akshay Kapadia for Applicant.
None for Proposed Respondent.

Coram : Sharmila U. Deshmukh, J.

Date : 17th February, 2025.

P. C. :

1. Interim Application has been preferred for bringing on record the legal heirs of deceased-Respondent No. 1 and for condonation of delay of 186 days caused in preferring the First Appeal and for setting aside the abatement. By order dated 3rd January, 2025, Court notice was issued to proposed Respondents. In addition, Advocate for Applicant was permitted to serve Respondents by private notice.
2. Office noting indicates that service report is still awaited.
3. Learned counsel for Applicant has tendered Affidavit-of-service, which shows that packet of private service has been returned 'unclaimed'.

4. Today, none appears for proposed Respondents.
5. Learned counsel appearing for Applicant submits that after notice came to be issued on 17th November, 2022, Applicant became aware that Respondent No. 1 had expired. He submits that as no details were received as far as the legal heirs were concerned, the Applicant investigated the details of occupants of flat from Secretary and Chairman of the building and thereafter, present Application came to be filed. He submits that proposed Respondents are deliberately avoiding the service of notice though residing in the suit flat.
6. It is not disputed that Respondent No. 1 had expired and no intimation had been given about the legal heirs by Advocate for Applicants prompting the Applicant himself to find out details about the legal heirs and file the present First Appeal. The First Appeal is of the year 1993, and is pending for final hearing. The service report of the Court notice is awaited though issued on 3rd January, 2025 and private service shows that notice is returned 'unclaimed', which constitutes a valid notice as the same was served at the address of suit flat.
7. For the reasons stated in the Application, delay of 186 days stands condoned and order dated 22nd March, 2024 passed by Registrar (Judicial-II) recording abatement *qua* Respondent No. 1 is recalled.
8. Interim Application is allowed. Amendment to be carried out

within a period of three weeks from today.

9. List the First Appeal on final hearing board of **28th March, 2025.**

[Sharmila U. Deshmukh, J.]