

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4488 OF 2025

Manibai Ambo Jadhav & Anr

..Petitioners

Versus

Vitthal Kama Shinde & Ors

...Respondents

Mr. Sachinkumar Rajepandhare, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATED : 8th APRIL 2025

P.C.:

- 1.** Heard the learned Counsel for the Petitioner.
- 2.** The Petitioners, who are the daughters of Smt. Fasabai Kama Shinde, the deceased-Plaintiff No.3 in RCS No. 55 of 2007, have preferred this Petition assailing the legality, propriety and correctness of an Order dated 1st December 2023, whereby Application to condone the delay in setting aside the abatement, set aside the abatement and bring the legal representatives of deceased-Plaintiff No.3, came to be rejected, and a further order dated 20th December 2024, whereby the Application preferred by the Petitioner to bring them on record, purportedly under Order I Rule 10 of the Code of Civil Procedure 1908 (“the Code”) also came to be rejected.

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3. The deceased-Plaintiff No.3 and her sons, Plaintiff No.1 and Plaintiff No.2, had instituted a Suit for declaration and injunction, on 7th August 2007. Plaintiff No.3 passed away on 10th October 2008. Applications to condone the delay in setting aside abatement and to bring the Petitioners as legal representatives of the deceased-Plaintiff No.3 was filed in the month of September 2023. By an order of 1st December 2023, learned Civil Judge, Junior Division, Shahapur, rejected the Application, as no sufficient cause to condone the delay and set aside the abatement was made out.

4. It seems Plaintiff Nos. 1 and 2 did not assail the said order. Instead, the Petitioners filed an Application to implead them as parties to the Suit purportedly under Order I Rule 10 (2) of the Code.

5. By an order dated 20th December 2024, the learned Civil Judge rejected the said Application as the Petitioners were trying to indirectly bring themselves on record despite the rejection of the Application to set aside the abatement.

6. Mr. Rajepandhare, the learned Counsel for the Petitioners, submitted that the Petitioners were unaware of the institution of the Suit and the developments in the Suit. The submission is required to be stated to be repelled.

7. Plaintiff Nos. 1 and 2 are the brothers of the Petitioners. It defies comprehension that for over 15 years, the necessity to bring the legal

representatives of deceased-Plaintiff No.3 would not have dawned on the Plaintiff Nos. 1 and 2. At any rate, once the Application to set aside the abatement and to bring the legal representatives of deceased-Plaintiff No.3 came to be rejected under the Provisions of Order XXII Rule 9 of the Code, the proper remedy was to assail the said order in an Appeal from Order under Order XLIII Rule 1(k) of the Code. Circumventing the said procedure, the Petitioners filed an Application to bring them on record, which has been rightly rejected by the Trial Court.

8. Thus, the Petition does not deserve to be entertained in exercise of the supervisory jurisdiction.

9. The Petition stands dismissed.

[N. J. JAMADAR, J.]