

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 14623 OF 2025

Sharad Narayan Tulpule And Anr. ...Petitioners

Versus

Vasant Dhondiba Jawalkar ...Respondent

Mr. Chaitanya Nikte, i/b Prajit Sahane, for the Petitioners.

SANTOSH
SUBHASH
KULKARNI

CORAM: N. J. JAMADAR, J.
DATED: 25th NOVEMBER, 2025

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Oral Order:-

1. Heard the learned Counsel for the petitioners.
2. The challenge in this petition is to an order dated 5th February, 2025, passed by the learned District Judge thereby issuing notice to the proposed legal representatives of original defendant No.8.
3. Defendant No.8 passed away on 19th July, 2021.
4. On 5th February, 2025, when the appeal was listed for final hearing, the appellants preferred an application to bring the legal representatives of deceased defendant No.8, on record. The petitioners filed an application for a declaration that, it was not necessary to bring the legal representatives of deceased defendant No.8 on record as defendant No.8 had appeared in

the suit and admitted the claim by filing a pursis on 9th March, 2010 (page 50 of the petition). Therefore, in view of the Order XXII Rule 4(4) of the Code of Civil Procedure, 1908 (“the Code”) it was not necessary to bring the legal representatives of deceased defendant No.8 on record. The said application was not decided by the learned District Judge and instead notices were issued on the application preferred by the appellants to condone the delay in bringing the legal representatives of defendant No.8 on record.

5. Evidently, the deceased defendant No.8 had admitted the suit claim. In that view of the matter, the learned District Judge ought to have decided the application (Exhibit-23) filed on behalf of respondent Nos.12 and 13 that, it was not necessary to bring the legal representatives of deceased defendant No.8 on record in view of the provisions contained in Order XXII Rule 4(4) of the Code.

6. Since the challenge in this petition is only to an order of issuance of notice, the Court considers it expedient to dispose of the petition without notice to the respondents, with request to the learned District Judge to pass an order on the application filed on behalf of respondent Nos.12 and 13 (Exhibit-23), before the applications for condonation of delay and bringing the legal

representatives of deceased defendant No.8 on record, are determined.

7. Needless to clarify that, if the Court comes to the conclusion that, in the circumstances of the case, bringing the legal representatives of defendant No.8 is not necessary, further inquiry would be superfluous.

8. Having regard to the pendency of the appeal and advanced age of the petitioners, the learned District Judge is requested to decide the said application as expeditiously as possible and, preferably, within a period of six weeks from the scheduled listing of the appeal.

9. The learned District Judge is requested to make an endeavour to hear and decide the appeal also as expeditiously as possible.

10. The petition stands disposed.

[N. J. JAMADAR, J.]