

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 8503 OF 2025
IN
FIRST APPEAL NO. 455 OF 2005**

Arif Shaikh ... Applicant
In the matter between:
Roshanbi Poonawala and others ... Appellants
vs.
Noor Jana Mohammed Umar Shaikh and others ... Respondents

**WITH
INTERIM APPLICATION (STAMP) NO. 18353 OF 2024
IN
FIRST APPEAL NO. 455 OF 2005**

Roshanbi Poonawala and others ... Applicants/Appellants
vs.
Noor Jana Mohammed Umar ... Respondents
Shaikh and others

Mr. Sanjiv Sawant a/w. Mr. Malhar Bageshwar for applicant in IA/8503/2025 and respondent No.11 in IAL/18353/2024.

Ms. Hajra N. Shaikh for applicant in IAL/18353/2024.

Mrs. Rucha Ambekar, Master (Adm.) for Court Receiver.

**CORAM : MANISH PITALE, J.
DATE : 27th JUNE, 2025**

P.C. :

. In these proceedings, there are two applications for consideration before this Court.

2. Interim Application No.8503 of 2025 is filed by original respondent No.11 praying for discharging the possession of Court Receiver insofar as Gala No.5 is concerned.

3. Interim Application (Stamp) No.18353 of 2024 is filed for restoration of first appeal, which stood dismissed for default, by an order passed by this Court on 30.04.2024. The said application for restoration suffers from delay of 33 days and hence, prayer is made for condoning the delay in moving the said application. Respondent No.11 has filed reply affidavit in the application for restoration, to oppose the prayer made therein.

4. Both the applications are taken up together for consideration. The learned counsel for respondent No.11 submits that the appellants have been recalcitrant in pursuing the first appeal and they have been enjoying an interim arrangement in the form of appointment of Court Receiver on the suit properties, due to which the interests of the respondents have been seriously hampered. It is submitted that the City Civil Court, in the judgement and order passed as far back as on 06.11.2004 in a suit filed in the year 1978, had specifically answered issue No.1 by holding that the said Gala No.5 was not a part of the assets of the partnership firm. It is submitted that the appellants did not pursue the appeal seriously at all and this is evident from the series of orders passed by this Court before disposing of the appeal in default. Attention of this Court was invited to orders dated 20.02.2024, 23.04.2024 and 30.04.2024, whereby ultimately the appeal stood dismissed for default.

5. In this backdrop, it is submitted that when respondent No.11 moved the Court Receiver for discharge of his possession in the light of the appeal being dismissed, it was suggested that an appropriate order may be obtained from this Court, pursuant to which Interim Application No.8503 of 2025 has been filed.

6. As regards the application for restoration moved on behalf of the appellants, it was submitted that the applicant was failed to make out any ground for showing indulgence to the appellants. Appellant Nos.1 to 3 expired years ago and yet, no steps were taken in that regard. The whole intention of the applicants therein is to further drag the proceedings and to make the respondents suffer due to the pendency of the first appeal, which arises out of the suit filed as far back as in the year 1978.

7. On the other hand, the learned counsel appearing for the original appellant Nos.4 and 5 submits that this Court may consider allowing the restoration application in the light of statements made on affidavit. The delay in moving the said application may be condoned, so that steps can be taken for bringing legal representatives of original appellant Nos.1 to 3 on record, to facilitate the hearing of the first appeal on merits. It is submitted that if the application filed on behalf of respondent No.11 is allowed, it would amount to granting full relief to the applicant, even when the first appeal is yet to be adjudicated on merits.

8. This Court has considered the rival submissions. The record indeed shows that the original appellants failed to take necessary steps for bringing the legal representatives of deceased appellant Nos.1 to 3 on record. The learned counsel appearing for original respondent Nos.4 and 5, who has filed the application for restoration of first appeal, could not point out the dates of deaths of appellant Nos.1 to 3. It was conceded that the said appellants expired years ago, thereby showing that the appellants have been recalcitrant in pursuing the first appeal and the final hearing of the appeal was hampered due to their conduct.

9. A perusal of orders dated 20.02.2024 and 23.04.2024 passed by this Court, demonstrates that no efforts were made on behalf of the appellants to pursue the final hearing of the appeal, although the same is pending since the year 2005 with the interim arrangement operating. On 23.04.2024, this Court granted last opportunity to the appellants to work out the appeal and posted the same for hearing on 30.04.2024. Since there was no appearance on behalf of the appellants on 30.04.2024, this Court was constrained to dismiss the appeal for default. The application for restoration suffers from delay of 33 days.

10. The statements made on behalf of the rival parties indeed indicate that appellant Nos.1 to 3 have expired and that their legal representatives were not brought on record till the appeal stood dismissed for default. In such a situation, this Court is of the opinion that even if the original appellants desire that the first appeal be considered on merits, they need to show their *bonafide*, by taking immediate steps for bringing on record legal representatives of the deceased appellant Nos.1 to 3 and also to file paper book, in the event the restoration application is to be allowed, to facilitate final hearing of the first appeal at the earliest.

11. At the same time, the fervent pleas made on behalf of respondent No.11 cannot be ignored that the recalcitrance on the part of the appellants has compounded sufferings for the said respondent, as the possession of Court Receiver has continued unabated. The prayer made in the application moved on behalf of respondent No.11 can also be considered, even if the restoration application is to be allowed by showing indulgence to the appellants.

12. In view of the above, the applications are disposed of as follows:

- (a) Interim Application (Stamp) No.18353 of 2024 is allowed and delay is condoned, thereby restoring the appeal, subject to the applicants moving appropriate applications for bringing on record the legal representatives of deceased appellant Nos.1 to 3 on or before 11.07.2025 and also filing paper book to facilitate final hearing of the appeal on or before 11.07.2025.
- (b) It is made clear that in the event the applicants fail to abide by the aforesaid conditions, the order condoning delay and restoring the appeal, shall stand recalled without further reference to Court.
- (c) Interim Application No.8503 of 2025 is allowed by discharging the possession of Court Receiver over Gala No.5, subject to the result of the first appeal, if restored upon the appellants satisfying the aforesaid conditions.

13. This Court is constrained to pass the above order in the light of the conduct of the appellants and the finding rendered by the City Civil Court on issue No.1 noted hereinabove, in respect of Gala No.5.

14. Both the applications stand disposed of in above terms.

(MANISH PITALE, J)

Priya Kambli