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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 949 OF 2025

IN

SUIT NO. 1797 OF 2012

Dimple Drums and Barrels Pvt. Ltd and others ... Applicants

Versus

Surendra Amritlal Kotadia and others ... Respondents

.....
Mr. Gaurav Mehta instructed by Bachubhai Munim & Co., Advocate for the Plaintiffs.

Mr. Vijay Kanoria, Advocate for the Defendants No.1, 3 and 4.

Mr. M.G. Gawde, Advocate for the Defendant No.5.

.....

CORAM : ABHAY AHUJA, J.

DATE : 9 DECEMBER 2025

P.C. :

Interim Application No.949 of 2025 :

1. Mentioned out of turn.
2. This Interim Application seeks to bring the heirs of the deceased Plaintiff No.4, Plaintiff No.5 and Plaintiff No.8 as well as the heirs of deceased Defendant No.2 on record in the Suit.
3. Mr. Mehta, learned Counsel, appears for the Plaintiffs and submits that since there are surviving Plaintiffs, the suit could not have abated. The learned counsel draws this Court's attention to paragraphs 9, 10 and 11, where the number of days of delay has been specified as

well as the reasons for the said delay have been attempted to be explained.

4. Mr. Mehta candidly submits that the Plaintiffs lost track of this matter purely on account of inadvertence and oversight which was accidental and neither deliberate nor intentional. Mr. Mehta submits that this Court may allow the application, subject to reasonable costs.

5. On the other hand, Mr. Kanoria, learned Counsel, appears for the Defendants No.1, 3 and 4 and submits that he has no particular objection if the application is allowed, considering that the suit is within the family members. Mr. Kanoria however submits that the larger dispute can be referred to mediation as the litigation is unnecessary.

6. Mr. Gawde, learned Counsel, appearing for the Defendant No.5 also leaves it to the orders of this Court.

7. Upon a query from this Court to Mr. Mehta as to whether service has been effected on the representatives/proposed legal heirs of the Plaintiffs and Defendants, Mr. Mehta tenders across the bar Affidavit of service dated 4th March 2025. The learned Court Associate submits that service has been effected.

8. I have heard the learned Counsel and considered their submissions.

9. Indeed Mr. Mehta, learned Counsel for the Applicant has fairly submitted that real reason is inadvertence and oversight. Although the same may be unintentional and not deliberate, timelines under Code of Civil Procedure, 1908 have to be adhered to. Therefore, although I propose to allow this Application, in view of the submissions of the learned Counsel including the learned Counsel for the Defendants and also considering that despite service, none appears for the heirs/legal representatives, but not without costs.

10. Accordingly, subject to payment of costs of Rs.50,000/- to the Bombay Panjrapole within a period of two weeks, the Interim Application is allowed in terms of prayer clauses (a) and (b), which read thus :

(a) the delay in filing the present application be condoned.

(b) amendments in terms of Schedule 'A' annexed hereto be permitted within such time as this Hon'ble Court deems fit.

11. Subject to payment of costs, let the amendments be carried out within a period of four weeks and the amended proceedings be served on all the concerned and an appropriate affidavit of service be filed.

12. Interim Application is allowed and disposed as above.

Suit No.1797 of 2012 :

13. Learned Counsel may consider the name of the Mediator by the next date.
14. List the Suit on **24th December 2025**.

(ABHAY AHUJA, J.)