

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAS) NO. 224/2018 AND CIVIL APPLICATION (CAS) NO. 225/2018

IN

SECOND APPEAL NO. 423/2015

(Khemji s/o Bapuji Makone Vs. Smt. Rajeshbai wd/o. Marotrao Wankhede & ors.)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Mr. R.G. Kavimandan, Advocate for appellants/applicants.
 Mr. A.P. Mane, Advocate for respondent Nos.2, 8 and 11.

CORAM: ROHIT W. JOSHI, J.

DATED : 15/04/2025.

Heard.

2. Respondent No.10 in the present second appeal is Sau. Abirabai Vitthalrao Natkar was respondent No.3 in R.C.A. No. 10/2005. The said appeal is decided by judgment and decree dated 21.04.2015. However, respondent No.10 who is respondent No.3 in R.C.A. No. 10/2005 had died prior to adjudication of the said appeal. Her legal representatives were not brought on record. By the present applications, the appellants/applicants is seeking condonation of delay in filing application for bringing legal representatives of deceased respondent No.10 on record with a prayer for setting aside abatement of appeal against her and is also seeking permission to bring her legal representatives on record. The legal representatives of deceased respondent No.10 are served, however, none appears for them. The

appellant has stated in paragraph No.1 of Civil Application No.224/2018 that intimation about demise as contemplated under Order 22 Rule 10-A of the Code of Civil Procedure was not given. The appellant has stated that he was not aware about demise of respondent No.10 while R.C.A. was pending and therefore, steps for bringing her legal representatives on record could not be taken in the said appeal.

3. For the reasons mentioned in the civil application Nos. 224/2018 and 225/2018, the said applications are allowed. However, it needs to be mentioned that since respondent No.10 had died prior to the filing of second appeal, the application cannot be considered to be one for bringing legal representatives of deceased respondent on record. The application will have to be considered as an application for addition of parties under Order 1 Rule 10 of the Code of Civil Procedure. Names of legal representatives of deceased respondent No.10 are allowed to be added as party respondents in the present second appeal. The effect of demise of respondent No.10, during pendency of first appeal and failure to bring her legal representatives on record in the said appeal will be considered at the time of final hearing of the appeal.

(ROHIT W. JOSHI, J.)