

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION (CAS) NO.495, 496 & 497 OF 2025 IN
SECOND APPEAL NO.70 OF 2023

Smt. Nirmalabai Wd/o Namdeorao Mokarkar (deleted as per Court order dated
08.05.2025)

Sau. Kusum w/o Madhukar Slukar and others

Vs.

Hariom s/o Ganeshlal Shahu and others

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

Court's or Judge's orders.

Shri R.R. Dawda, Advocate for appellant nos.2 to 4.
Shri S.N. Mahajan, Advocate for respondent nos.

CORAM : M.W. CHANDWANI, J.
DATE : 18.06.2025.

1. Heard.
2. By the present applications, the appellants are seeking to condone the delay in bringing legal representatives of deceased respondent no.1 on record, setting aside abatement order and permission to bring the legal heirs on record.
3. It is submitted that respondent no.1 expired on 08.11.2022 and his death was reported to this Court by his counsel vide pursis dated 24.07.2023. The Registrar (J) of this Court by order dated 28.06.2024 abated the appeal against respondent no.1. Hence, the present application came to be filed.
4. The contention is that, the appellants were represented by their earlier counsel who did not take any

steps to inform about the death of respondent no.1 to the appellants. By taking another ground, it is also contended that appellant nos.1 to 3 were represented by appellant no.4 through their Power of Attorney. However, he met with an accident in the year 2022 and could not recover and was undergoing post-operational treatment with the doctor. It is submitted that, it is only when the draft sale-deed was served upon them on 07.04.2025 in execution proceedings initiated by the respondent, that the appellants came to know about the abatement order against respondent no.1 and filed these applications. Therefore, they prayed that delay in filing the application for bringing legal heirs on record be condoned and they be permitted to bring the legal heirs of deceased respondent no.1 on record by setting the abatement order aside.

5. The application is vehemently opposed by the respondents, more particularly, the legal heirs of respondent no.1. The contention is that the appellants were negligent. The appeal came to be dismissed once and thereafter, it was restored. In spite of having knowledge about the death of respondent no.1 which was disclosed to them by the counsel for respondent no.1 by filing pursis dated 24.07.2023, the appellants did not take steps. According to him, liberal approach is to be adopted while condoning the delay but the same cannot be used to vacate the right accrued to the other side by Section 3 of the Limitation Act and it cannot be used when there is inordinate delay. It is also contended that law

of limitation is rooted in public policy and litigation cannot be permitted to be suspended in a state of endless continuity. To buttress his submissions, he seeks rely on the case of Supreme Court the decision of this Court in the case of *Adolf Olegario Nazareth Vs. Sarpanch / Secretary, Village Panchayat of Uccassaim – Paliem – Punola and another*¹.

6. Let me state that the judgment relied upon by the learned counsel for the legal representatives of respondent no.1 is in respect of condonation of delay in filing appeal. However, the present application is for condoning the delay in bringing the legal representatives of respondent no.1 on record. It is a matter of practice that second appeals are not being listed frequently and no dates are being given. The parties do not appear in the matter and it is when counsel intimates the parties that the parties get to know the development in the proceeding. It is matter of record that inspite of filing of pursis dated 24.07.2023 the earlier counsel did not appear on 07.09.2023, 16.10.2023, 25.01.2024 and 07.03.2024 when time to take steps was granted. This supports the contention of the learned counsel for the appellants that the earlier counsel did not inform the appellants about death of respondent no.1. That apart, the prescription of appellant no.4 (power of attorney holder) has been on record for the relevant period. Therefore, it would not be out of place to believe the contention of the appellants that it is only on 07.04.2025, when they received

the draft sale-deed, they came to know about the abatement order. No prejudice will be caused to the respondents if the delay is condoned. Therefore, the application for condonation of delay deserves to be allowed subject to payment of costs. Accordingly, the delay is condoned subject to payment of costs of Rs.10,000/- to the Tiroda Bar Association, Tiroda, District Gondia, for the library development of its library.

7. Consequently, the abatement order dated 28.06.2024 is set aside. The appellants are permitted to bring the legal representatives of deceased respondent no.1 on record. Amendment be carried out within two weeks.

8. The applications stand disposed of.

SECOND APPEAL NO.70 OF 2023

9. Learned counsel for the respondent seeks time to file reply on the stay application.

10. It is contended that the draft sale-deed has been approved by the executing Court and 20.06.2025 is fixed as the date.

11. In view of the above, the trial Court shall not proceed in the matter till next date of hearing.

12. Stand over next week.

JUDGE

Wagh