

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

CIVIL APPLICATION (CAS) NO.1019 & 1020 OF 2024 IN
SECOND APPEAL NO.160 OF 2010

Vidyawati Bhadursingh Rajput (dead) through LRs **Vs.** Smt. Shobatai W/o
Rajaram Junannkar (deceased) through LRs

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

Court's or Judge's orders.

Shri R.G. Vaidya with Shri S.S. Joshi, Advocates for appellant.
Shri Milind Wadodkar, Advocate for respondent no.1.

CORAM : M.W. CHANDWANI, J.
DATE : 26.03.2025.

1. By the present applications, the applicants, who are claiming themselves to be the legal heirs of appellant no.3 are seeking to be substituted in place of their mother deceased appellant no.3–Bhagwanti.

2. The contention is that Bhagwanti herself was not an original party to the suit but she was brought on record as the legal representative of original defendant no.2 – Vidyawati. Appellant nos.1 and 2, who are the brothers of deceased appellant no.3, were looking after the appeal after her name was substituted. Appellant no.3 – Bhagwanti died in the year 2012 but she did not disclose about the pending proceedings to her legal representatives. When the matter came-up for final hearing, the counsel for the appellant no.3 with intent to have an interaction with the parties, attempted to call appellant no.3 – Bhagwanti but he came to know that she is no more; at that time, legal representatives

of the deceased came to know about pendency of the present proceedings. Since the present proceedings came to the knowledge of the applicants just recently therefore, earlier their names could not be brought on record. It is prayed that delay in filing the application may be condoned and their names be substituted in place of their mother i.e. appellant no.3.

3. *Per contra*, learned counsel for the respondent vehemently objected the application on the ground that it is a huge delay of approximately 4000 days. The delay has not been sufficiently explained. Therefore, the application for condonation of delay is required to be rejected. He has placed reliance on the decision in the case of ***Pathapati Subba Reddy (died) by LRs and Vs. Special Deputy Collector (LA)***¹, wherein the Supreme Court in para 30 has held that when sufficient cause has not been shown for condoning the delay, it is not required to be condoned. Therefore, he sought rejection of the application.

4. A statement is made on affidavit that the present applicants recently came to the knowledge of the present proceedings. Evidently, deceased Bhagwanti was not a party to the suit proceedings, she had been brought on record as a legal representative of her mother Vidyawati alongwith her two brothers. It is a general practice in society that after the marriage, a girl remains busy with her matrimonial home

¹ *Special Leave Petition (Civil) No.31248/2018*

and has the responsibility of the matrimonial home and her children. According to the learned counsel for the applicants, it is appellant nos.1 and 2 who were contesting the appeal therefore, I find substance in the argument for the learned counsel for the applicants that she may not have shared the information about pendency of the present proceedings to the present applicants. The Supreme Court in the case of ***Perumon Bhagwathy Devaswom Vs. Bhargavi Amma (dead) by LRs and others***² has held that in the proceedings which are not being listed periodically like before the trial Court, the legal heirs may not know the significance or relevance of a person with reference to a pending appeal if they do not know about the appeal. Even otherwise, while condoning the delay in bringing the legal heirs on record, a liberal approach needs to be adopted so far as the delay is concerned.

5. In view of the above, coupled with the fact that right to sue survives, the delay is condoned subject to payment of costs of Rs.10,000/- [Rs. Ten thousand only] to the Tiroda Bar Association, Tiroda, District Gondia for its library development, within two weeks from today. The applicants are permitted to bring their names on record. Consequently, the abatement order is set aside. Amendment be carried out within two weeks from today.

6. Both the applications stand disposed of.

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7. Stand over after two weeks.
8. The interim order, if any, to continue till the next date of hearing.

JUDGE*Wagh*