IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

908 SECOND APPEAL NO. 430 OF 1994

Dattatraya Babarao Katempalle And Others
VERSUS
Madhavrao Balwant Hawa And Others
...
Mr. Deshmukh Umakant B., Advocate for Appellants

WITH

CIVIL APPLICATION NO. 11644 OF 2026 IN SA/430/1994
....

CORAM : SANJAY A. DESHMUKH, J.
DATE : 07.10.2026

PER COURT :-

CIVIL APPLICATION NO. 11644 OF 2026

1. Heard learned Advocate for the Applicants.

2. This is an application for condonation of 5,032, 7,434, and 3,789 days delay caused in filing the Civil Application for bringing the legal representatives of deceased Appellant Nos.1, 2 and 3 respectively on record as well as for setting aside abatement and permission to bring the L.Rs. of deceased Appellants on record.

3. Learned Advocate for the Applicants submits that the legal representatives of the Appellants were not aware of the legal procedure and therefore they did not inform the learned Advocate

for the Appellants about the death of the Appellants, resulting in the delay. He prayed to allow the application, as the delay was not caused deliberately.

4. Perused the application. Considering the reasons stated therein and the fact that the Applicants seek to bring the legal representatives of the deceased Appellant Nos.1 to 3 on record so as to enable this Court to decide the lis finally on merits, the delay deserves to be condoned as it is not deliberately caused. It is well settled that, while considering an application for setting aside abatement, the Courts are required to adopt a liberal approach, as laid down by the Hon'ble Supreme Court in the case of ***Perumon Bhagvathy Devaswom v. Bhargavi Amma (Dead) by LRs., (2008) 8 SCC 321***. Further considering the law laid down by the Hon'ble Supreme Court in the case of ***Collector, Land Acquisition, Anantnag Vs. Katiji, 1987 AIR (SC) 1353,*** in which it is held that expression "sufficient cause" under Section 5 of the Limitation Act 1963, is required to be construed liberally and in a manner that enables the Court to advance substantial justice by deciding matters on merits. The Court further held that the expression "every day's delay must be explained" does not warrant a pedantic approach and that the

principles of limitation should be applied in a rational, common-sense and pragmatic manner. Where substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred.

5. In view of the facts and circumstances of the present case, the application deserves to be allowed in the interest of justice, as the delay has not been deliberately caused. Hence, the following order:

::ORDER::

a. The application is allowed.

b. The delay of 5,032, 7,434, and 3,789 days caused in filing the Civil Application for bringing the legal representatives of deceased Appellant Nos.1 to 3 on record is condoned.

c. The abatement is set aside.

d. Permission to bring the legal representatives of of deceased Appellants on record is granted. The amendment be carried out within a period of one week from today. If the amendment is not carried out within the stipulated period, the Applicants shall be liable to pay costs of Rs.2,000/- for each Appellant i.e., Rs.6,000/- for three Appellants.

. Stand over to 13.10.2026 for final hearing.

[SANJAY A. DESHMUKH, J.]

HRJadhav