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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1332 OF 2025
IN
WRIT PETITION NO. 8897 OF 2003**

Shobhan Jaywant Kothare and Anr.	.. Applicants
<u>IN THE MATTER BETWEEN:</u>	
Jaywant Haribhau Kothare and Anr.	.. Petitioners
Versus	
Kalyanji Premji Gangar and Anr.	.. Respondents

**WITH
INTERIM APPLICATION NO. 1333 OF 2025
IN
WRIT PETITION NO. 8897 OF 2003**

Meena Madhav Kothare	.. Applicant
<u>IN THE MATTER BETWEEN:</u>	
Jaywant Haribhau Kothare and Anr.	.. Petitioners
Versus	
Kalyanji Premji Gangar and Anr.	.. Respondents

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- Mr. Atit Shukla a/w. Mr. Dharmesh Pandya, Advocates i/by Pandya's Law Era for Applicants in both Interim Applications.
 - Mr. Jitendra Damani a/w. Mr. Ankit Yadav, Advocates for Respondent No.1.
 - Mr. P.G. Sawant, AGP for Respondent No.2 – State.

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CORAM : MILIND N. JADHAV, J.
DATE : JUNE 08, 2026

P.C.:

1. Heard Mr. Shukla, learned Advocate for Applicants; Mr. Damani, learned Advocate for Respondents and Mr. Sawant, learned AGP for State.

2. Briefly stated, present Writ Petition No.8897 of 2003 is filed by one Jaywant Haribhau Kothare i.e. Petitioner No.1 and one Madhav Haribhau Koyhare i.e. Petitioner No.2 assailing Judgment dated 28.03.2003 passed by Secretary and Officer on Special Duty (Appeals) in Revision Application No. RTS/2601/P.K338/L.6/P.K399(12) along with order dated 08.03.2001 passed by the Deputy Collector (Appeals) in Case No. C/RTS/A-23/97 which upholds Order dated 04.11.1997 passed by Sub-Divisional Officer, Mumbai Suburban District in Case No.DLN/RTS/A-33/96. This Court admitted present Writ Petition by Order dated 11.12.2003, however it was never placed for final hearing before the roster Judge after admission. Pending final hearing of present Petition, both Petitioners have expired.

2.1. Present Petition was finally placed before Court on 12.12.2024 for final hearing and erstwhile Advocate for Petitioners addressed letter dated 09.12.2024 to legal heirs of both Petitioners informing them of the same. On 12.12.2024, erstwhile Advocate for Petitioners appeared before this Court and submitted that both Petitioners had expired and sought time to amend present Petition to bring on record legal heirs of deceased Petitioners. Hence Interim Application Nos. 1332 of 2025 and 1333 of 2025 seeking amendment of Petition to bring on record legal heirs of deceased Petitioners after delay of 6525 days and 25 days respectively were filed.

2.2. Mr. Shukla, learned Advocate for Applicants would submit that present Petition was filed on 02.05.2003 and admitted on 11.11.2003 and thereafter, present Petition was never placed on board for final hearing. He would submit that erstwhile Petitioners did not inform their legal heirs i.e. present Applicants that present Petition was filed by them and pending before this Court. Hence when it was finally placed on board for final hearing on 12.12.2024, present Applicants were shocked to receive notice about the same which was issued to them by the erstwhile Advocate for original Petitioners.

2.3. He would submit that Petitioner No.1 expired on 07.12.2006 and Petitioner No.2 expired on 23.09.2024 leaving behind their legal heirs i.e. present Applicants. He would submit that legal heirs i.e. present Applicants did not inform Advocate for Petitioners' about Petitioners' demise since they were not aware of pendency of present Petition and hence took no steps to move the Court and seek amendment of present Petition after demise of original Petitioners. He would submit that when present Petition was placed on board, Applicants promptly informed their Advocates to take necessary steps to amend present Petition and bring their names on record to contest Petition. He would submit that present Interim Applications are filed on 17.01.2025 after a delay of 6525 and 25 days respectively, that delay be condoned in the interest of justice and names of present Applicants be substituted as Petitioners so as to enable them to

prosecute the Petition. He would refer to and rely upon the following decisions of the Supreme Court in support of his submissions:-

*(i) Puran Singh and Ors. Vs. State of Punjab and Ors.*¹

*(ii) Perumon Bhagyavathy Devaswom Vs. Bhargavi Amma (Dead) by L.R and Ors.*²

*(iii) Kishorilal (D) Thr. Lrs. & Ors. Vs. Gopal & Ors.*³

*(iv) Om Prakash Gupta alias Lalloowa (now Deceased) and Others Vs. Satish Chandra (Now Deceased)*⁴

3. **PER CONTRA**, Mr. Jitendra Damani, learned Advocate for Respondent No.1 would vehemently oppose grant of reliefs and would submit that after present Petition was filed, Petitioners did not take any steps to get the Petition on board for final hearing. He would submit that Petitioner No.1 expired on 07.12.2006, however Petitioner No.2, during his lifetime, did not take steps to bring on record heirs of Petitioner No.1, hence present Petition stands abated under provisions of Civil Procedure Code, 1908 (for short "**CPC**") for want of prosecution as against Petitioner No.1. He would submit that Order XXII Rule 3 of CPC provides period of limitation of 150 days to bring on record legal heirs of a deceased party, however Petitioner No.2 did not take such steps within the statutory period of time for reasons best known to him, hence now the legal heirs of both Petitioners are precluded from filing the Interim Applications seeking amendment and substitution of

1 AIR 1996 SC 1092

2 2008 AIR SCW 6025

3 Civil Appeal No. 172 of 2026 decided on 12.01.2026

4 2025 SCC OnLine SC 291

their names as Petitioners to prosecute the Petition.

3.1. He would submit that Petitioner No.2 did not amend present Petition to bring on record legal heirs of Petitioner No.1 when he expired in 2006 thus present Interim Applications are hopelessly time barred since no sufficient cause or reason is given for filing the application to bring on record legal heirs of deceased Petitioners in pursuance of Order XXII Rules 2,3 and 4 of CPC and hence present Interim Applications ought to be dismissed as the Petition clearly stands abated. In support of his above submission he would refer to and rely upon the decision of the Supreme Court in the case of ***Balwant Singh vs. Jagdish Singh and Ors.***⁵.

3.2. He would submit that this Court issued Rule in present Petition on the basis of pending Suit in the Small Causes Court wherein no interim order was passed and that Suit came to be disposed off in 2019. He would submit that present Applicants filed application before City Survey Officer, Malad South to add their names in the revenue record pertaining to suit lands as legal heirs of deceased without any valid supporting documents, and their application came to be rejected by the City Survey Officer, Malad (South) due to inordinate delay of 17 years.

3.3. He would submit that present Interim Applications for

⁵ Civil Appeal No.1166 of 2006 decided on 08th July 2010

impleadment and substitution are filed after a delay of more than 6525 days i.e. 17 years *qua* original Petitioner No.1 with no cogent ground or reasonable explanation put forth by Applicants, hence present Petition stands abated and thus present Interim Applications are rendered infructuous. He would submit that Applicants have put forth no cogent reasons to explain Petitioner No.2's failure to bring on record legal heirs of Petitioner No.1 after his demise in 2006 and hence present Interim Applications ought to be dismissed and the present Petition stands abated.

4. Mr. Shukla, learned Advocate for Applicants would draw my attention to the Affidavit in Rejoinder dated 27.01.2026 filed by Ms. Bhakti Kothare and contend that Applicants were unaware of any litigation and pending proceedings in this Court, hence they did not inform their Advocates about the death of both Petitioners. He would submit that though Petitioner No.1 expired on 07.12.2006, present Petition was prosecuted by Petitioner No.2 till his demise after which his legal heirs are required to be brought on record to prosecute the present Petition. He would submit that present Petition cannot abate since right to sue devolved to legal heirs of Petitioner Nos.1 and 2, hence right to sue also continues to the legal heirs of both Petitioners. He would submit that since Shobhan Jaywant Kothare is not a party to the present Petition, she cannot be called upon to submit title documents at this stage in respect of property subjected to litigation in

the Small Causes Court. He would submit that order passed by Revenue Authorities cannot attain finality and confirm right, title and interest in favour of Respondents. He would urge the Court to allow present Interim Applications to bring on record legal heirs of both deceased Petitioners as contesting Petitioners.

5. I have heard the learned Advocates for the respective parties at the bar and perused the record of the case with their able assistance. Submissions made by the Advocates have received due consideration of the Court.

6. This Petition challenges order dated 28.03.2003 passed by Secretary and Officer on Special Duty (Appeals) in Revision Application No. RTS/2601/P.K338/L.6/P.K399(12). It is filed by 2 Petitioners. Petition was admitted on 11.12.2003 thereafter it was never placed on board for final hearing. While present Petition remained pending, Petitioner No.1 expired on 07.12.2006 however Petitioner No.2 did not bring legal heirs of Petitioner No.1 on record neither did he give notice to Respondents that Petitioner No.1 expired and take requisite steps in accordance with law. Subsequently Petitioner No.2 expired recently and his legal heirs are also required to be brought on record. Hence present Interim Applications.

7. The law with respect to death of parties to proceedings is enumerated under Order XXII of Civil Procedure Code, 1908 (for short

"CPC"). It is seen that Order XXII Rules 1 and 2 of CPC mandate that death of parties to proceeding shall not cause the proceeding to abate if right to sue survives. Therefore, if right to sue survives then concerned party is expected to follow provisions of Order XXII of CPC i.e. substitute legal heirs of deceased party within statutory period of limitation. Order XXII Rules 1 and 2 are reproduced below for ease of reference:-

*"1. No abatement by party's death if right to sue survives.
—The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.*

2. Procedure where one of several plaintiffs or defendants dies and right to sue survives.— Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to the effect to be made on the record,. and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants."

8. From the above it is seen that when right to sue devolves upon the legal heirs of deceased party to any proceeding then it will not abate and continue to proceed against opposite party. It is seen that when there are several parties and right to sue survives after demise of one of the other parties alone, then Court shall cause an entry to be made into Court's record with respect to demise of prosecuting party and continue proceeding against remaining parties. In the present case, after present Writ Petition was admitted, Petitioner No.1 expired in 2006 and his legal heirs were required to be

substituted, however since this Petition is prosecuted by two Petitioners, where *prima facie* both of whom had interest as well as right to sue and prosecute this Petition, provisions of Order XXII Rules 1 and 2 cannot be made applicable to the facts of the present case as there was no impediment for Petitioner No.2 to singly prosecute this Writ Petition in accordance with law.

9. It is seen that Petitioner No.2 expired on 23.09.2024, hence it became proper and necessary for his legal heirs to be brought on record. However, it is seen that legal heirs of both Petitioners were not aware of pendency of this Writ Petition and on coming to know of the same, they took prompt steps in accordance with law to bring themselves on record to prosecute Writ Petition. In this regard I would like to refer to upon a decision of the Supreme Court in the case of ***Puran Singh and Ors. V/s. State of Punjab and Ors.***⁶ which was relied upon by Mr. Shukla to enumerate Court's approach to applications for substitution and abatement under the provisions of Order XXII of CPC.

Paragraph No. 12 is reproduced hereunder for ease of reference:-

“12. As such even if it is held that Order 22 of the Code is not applicable to writ proceedings or writ appeals, it does not mean that the petitioner or the appellant in such writ petition or writ appeal can ignore the death of the respondent if the right to pursue remedy even after death of the respondent survives. After the death of the respondent it is incumbent on the part of the petitioner or the appellant to substitute the heirs of such respondent within a reasonable time. For purpose of holding as to what shall be a reasonable time, the High Court may take note of the period prescribed under Article 120 of the Limitation Act for substituting the heirs of the deceased defendant or the

6 AIR 1996 SC 1092

respondent. However, there is no question of automatic abatement of the writ proceedings. Even if an application is filed beyond 90 days of the death of such respondent, the Court can take into consideration the facts and circumstances of a particular case for purpose of condoning the delay in filing the application for substitution of the legal representative. This power has to be exercised on well-known and settled principles in respect of exercise of discretionary power by the High Court. If the High Court is satisfied that delay, if any, in substituting the heirs of the deceased respondent was not intentional, and sufficient cause has been shown for not taking the steps earlier, the High Court can substitute the legal representative and proceed with the hearing of the writ petition or the writ appeal, as the case may be. At the same time the High Court has to be conscious that after lapse of time a valuable right accrues to the legal representative of the deceased respondent and he should not be compelled to contest a claim which due to the inaction of the petitioner or the appellant has become final.

10. From the above, it is seen that even though application for substitution of legal heirs is filed beyond statutory period of 90 days, proceedings cannot abate without Court expressing its imprimatur on the peculiar facts of the matter and submissions with respect to condonation of delay in filing such application. It is trite law that Court must exercise its discretionary power to hear and liberally adjudicate applications for condonation of delay for substitution of legal heirs of deceased parties to proceedings and if satisfied with party's intention and sufficient cause, Court may condone the delay for substitution of legal heirs. It is seen that in all cases of delay in filing applications or any document as required by law, there is lapse on part of litigant or his Advocate, however if the reason for such lapse does not reek of *malafides* and dilatorily tactics, then Court cannot to shut the door of relief on such litigant. It is necessary for Court to examine cause for

delay in filing application for substitution of legal heirs and if it is seen that such delay occurred merely to gain time, the Court ought to deal with such cases with an iron hand.

11. In the present case, explanation propounded by Applicants for the delay in filing present applications for substitution is that their fathers who were Petitioners to this Writ Petition were solely handling all litigation before lower forums and this Court therefore present Applicants were in the dark as to pendency of this Writ Petition and all other litigation before lower forums. It is further seen that when listing of this Petition was intimated to erstwhile Advocate for Petitioner, he informed present Applicants about the same and it is seen that Applicants immediately filed the present Interim Applications seeking directions to implead themselves as legal heirs in accordance with law hence in my opinion the delay in compliance with provisions of Order XXII of CPC is sufficiently explained and requirements of Section 5 of Limitation Act, 1963 stands sufficiently fulfilled.

12. It is further seen that in High Courts, pendency of appeals after their admission for final hearing are treated differently than appeals pending for hearing before lower Courts. This Writ Petition is in the nature of an Appeal. When appeals are admitted, they go into cold storage and are listed before the relevant roster bench automatically or when Interim Application seeking directions is filed.

Hence it is quite common for admitted Writ Petitions and appeals to remain pending for final hearing for several years and in such a situation, parties can do nothing but wait for their appeal to be listed and in the interregnum, parties are not required to periodically enquire whether the opposite side or any party is dead or alive during such a period. In this regard, Order XXII Rule 10A casts a duty on Advocates to inform Court about party's demise and take steps to substitute the expired party with its legal heirs. If no steps for substitution are taken by other side then this may constitute negligence which cannot be allowed. In this regard, I would like to refer to and rely upon a decision of the Supreme Court in the case of ***Perumon Bhagvathy Devaswom Perinadu Vs. Bhargavi (Dead) by L.Rs. and Ors.***⁷ wherein the Supreme Court laid down certain principles necessary to decide application for condonation of delay and allow prayer of setting aside abatement. Paragraph No.13 is relevant and reproduced below for ease of reference:-

13. The principles applicable in considering applications for setting aside abatement may thus be summarised as follows:

(i) The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words "sufficient cause" in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant.

⁷ AIR 1996 SC 1092

(ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.

(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.

(iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in refiling the appeal after rectification of defects.

(v) Want of "diligence" or "inaction" can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal.

13. Applying the aforesaid principles and guidelines to the present case, it is seen that they squarely apply to the facts of the present case. It is seen that erstwhile Petitioners expired without informing their legal heirs about the pendency of present Writ Petition and when the same was placed on board for final hearing, only then did it come to their knowledge. Furthermore, even after the demise of Petitioner No.1, present Writ Petition could have been sufficiently

prosecuted by Petitioner No.2 under the provision of Order XXII Rule 2, thus it was only after expiry of Petitioner No.2 recently that the legal heirs of both erstwhile Petitioners were needed to be brought on record and they took requisite steps expeditiously without delay. Therefore in the facts of the present case, action of Applicants does not suffer from want of diligence or inaction on their part. It is further seen that there is no material produced on record to show that Applicants belatedly filed the present Interim Applications for substitution, hence Applicants have sufficiently and satisfactorily made out a case for belated filing of these Interim Applications and for condonation of delay.

14. In the present Interim Applications, it is seen that prayer for substitution of legal heirs is accompanied by prayer seeking to set aside abatement of the Writ Petition. In this regard, law is well settled that such applications and prayers are to be treated liberally and Court ought not to pursue hypertechnical approach or make a roving enquiry to satisfy itself on the legality of such prayer. The prayer to set aside abatement and allow substitution does not require lengthy reasons with supporting evidence. When parties to suit or proceeding expire and their legal heirs are not brought on record within the time frame prescribed by law, the suit / proceedings automatically abate and no order from the Court is necessary. Hence, plain prayers seeking setting aside of abatement and substitution of legal heirs is sufficient for Court

to adjudicate and allow the same. In this regard, attention is drawn to paragraph No. 8 of the decision of the Supreme Court in the case of *Mithailal Dalsangar Singh Vs. Annabai Devram Singh Kini*⁸ to show that Courts are to deal with application for substitution of legal heirs containing prayer to set aside abatement liberally. Paragraph No. 8 is reproduced below for ease of reference:-

“8. Inasmuch as the abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be considered liberally. A simple prayer for bringing the legal representatives on record without specifically praying for setting aside of an abatement may in substance be construed as a prayer for setting aside the abatement. So also a prayer for setting aside abatement as regards one of the plaintiffs can be construed as a prayer for setting aside the abatement of the suit in its entirety. Abatement of suit for failure to move an application for bringing the legal representatives on record within the prescribed period of limitation is automatic and a specific order dismissing the suit as abated is not called for. Once the suit has abated as a matter of law, though there may not have been passed on record a specific order dismissing the suit as abated, yet the legal representatives proposing to be brought on record or any other applicant proposing to bring the legal representatives of the deceased party on record would seek the setting aside of an abatement. A prayer for bringing the legal representatives on record, if allowed, would have the effect of setting aside the abatement as the relief of setting aside abatement though not asked for in so many words is in effect being actually asked for and is necessarily implied. Too technical or pedantic an approach in such cases is not called for.”

15. In view of the above observations, findings and citations, present Interim Applications seeking condonation of delay to substitute legal heirs of deceased Petitioners as per Schedule of Amendment appended at Exhibit – “C” to both Interim Applications stand allowed.

⁸ (2003) 10 SCC 691

Interim Application Nos. 1332 of 2025 and 1333 of 2025 are both allowed in terms of prayer clauses (a), (b) and (c) respectively. Delay in filing both Applications stands condoned. In that view of the matter, abatement of Writ Petition No.8897 of 2003 , if any, is set aside.

16. Advocate for Applicants is permitted to carry out amendment in present Writ Petition in the concerned Department as per Schedule appended at Exhibit – “C” to both Interim Applications in the Writ Petition within a period of two weeks from today and serve copy of fresh Writ Petition to Respondent/s within a period of two weeks thereafter positively.

17. Department will allow the necessary amendment to be carried out in the Writ Petition. Re-verification stands dispensed with.

18. After the amendment is carried out, Registry to list the Writ Petition for final hearing before the regular roster Court.

19. Both Interim Application Nos.1332 of 2025 and 1333 of 2025 are allowed and disposed of.

[MILIND N. JADHAV, J.]

20. After this order is pronounced in Court, Mr. Damani, learned Advocate for Respondent No. 1 seeks stay of the order passed by this

Court in order to test its validity and legality before the Superior Court. However, in view of the observations and findings given, I am not inclined to grant any stay. Hence, the request made by the learned Advocate for Respondent No.1 is rejected.

[MILIND N. JADHAV, J.]

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