

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 9182 OF 2025
IN
WRIT PETITION NO. 7742 OF 2004

Kuilankattil Mohamed Annuni (since deceased) ...Applicants.
Through. Legal Heirs and Ors.

Versus

Ayub Mohamed Patel And Anr ...Respondents

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CHAVAN

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Mr. Sameer Bhalekar for the Applicants.
Mr. Ashwin Kapadnis a/w Ms. Rutvi Ovhal for Respondent.

CORAM : M.M. SATHAYE, J.
DATE : 6th JANUARY 2026

P.C. :

1. Heard learned Counsel for the parties.
2. This is an application for bringing legal heirs of sole Petitioner on record, for setting aside abatement of Writ Petition on account of death of sole Petitioner. There is delay of about 3 years and 227 days (as per office note) in filing the application.
3. The Applicant has stated in the application that the petition was admitted in June 2006 and was pending for final disposal. That the Petitioner was informed by the Advocate that as and when the matter would come up for final hearing, it will be informed. That during the pendency of the petition, the sole Petitioner expired on 17.06.2019. That out of present Applicants, Nos. 1 to 7 are staying at native place and only Applicant No.8 is residing in Mumbai who is carrying on

business. That Applicants were not aware that after the death of Petitioner, their names are required to be brought on record.

4. It is stated in the application that on 16.03.2025, Applicant No.8 came to know through the Advocate that the matter is listed for hearing and necessary instructions were sought. At this time, the Applicant No.8 informed the advocate about the death of sole Petitioner. Thereafter, on being advised, the present application is filed on 08.04.2025.

5. Learned Counsel for the Respondents replying on the Affidavit-in-Reply, contended that it is stated in the application itself that Applicant No.8 used to meet the Advocate and therefore, it is unbelievable that Advocate was not aware of the death of the Petitioner. He submitted that application is nothing but an after thought and delay is not properly explained.

6. I have considered the submissions and perused the application and reply. It is stated in the application that Applicant No.8 had met the Advocate for a couple of times because the Petitioner was unable to move on account of ill-health, for seeking advice in other legal matters. It is not stated by the Applicant that Applicant No.8 regularly used to meet the Advocate. In essence, the delay is caused due to the lack of necessary information and instructions given to the Advocate in time. It appears that it is only when the Advocate contacted one of the legal heirs for instructions in the matter when the petition was listed, that the necessary steps were initiated.

7. Considering the averments and reasons offered for delay and

further considering that the delay should not defeat the cause of justice and the petition should be heard on merits, in my view sufficient cause is made out. However, considering the extent of delay, the condonation cannot be unconditional.

8. Hence following order :

(A) Subject to Applicants paying costs of Rs. 15,000/- to the Respondents, within a period of 2 weeks from today, the application is allowed, delay is condoned and the applicants are permitted to bring the legal heirs of sole Petitioner on record as per the schedule. Amendment to be carried out within a period of 2 weeks from today.

(B) Costs to be paid by drawing a pay-order in the name of Respondent No.1 who shall accept the costs on behalf of all the Respondents. Pay-order can be handed over to the Advocate for the Respondents.

9. Interim Application is disposed of in above terms.

(M.M. SATHAYE, J.)