

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1273 OF 2026

Vaijayanti Baliram Khandale and ors. ...Petitioners

Versus

Hirubai Pundlik Gauri and ors. ...Respondents

Mr. Abhijit Kadam, for the Petitioners.

Ms. Anubha Rastogi, a/w Ms. Bhavana Mhatre, for Respondent
Nos.1, 2 and 3.

CORAM: N. J. JAMADAR, J.

DATED: 24th FEBRUARY, 2026

Oral Order:-

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 27th October, 2025, passed by the learned Civil Judge, Thane, whereby an application preferred by the legal representatives of the deceased plaintiff No.2 to bring themselves on record, came to be rejected by the trial Court.
3. The petitioners – applicants claimed to be the legal heirs of Sangi Tawade – plaintiff No.2, who passed away on 15th October, 2019. Deceased plaintiff No.2 and plaintiff Nos.1 and 3 had instituted the suit seeking a declaration that, the predecessor-in-title of the plaintiff Naga Padu Gauri was the protected tenant

in respect of the suit premises and after demise of late Naga Padu Gauri, they have succeeded to the interest of late Naga Padu Gauri in the suit properties and defendant Nos.1 to 3 have got their names wrongfully mutated to the record of rights to the suit land and usurped the suit land.

4. The petitioner filed an application to bring themselves on record by condoning the delay of 65 months and 10 days in seeking the setting aside of the abatement. It was, *inter alia*, contended that the Civil Court had framed a preliminary issue about the tenancy and referred the same to the authorities under the Maharashtra Tenancy and Agricultural Lands Act, 1948 ("the MT&AL Act"). The ALT had referred the parties to mediation. Therefore, steps to bring the legal representatives of deceased plaintiff No.2 on record could not be taken within the stipulated period.

5. The application was resisted by the defendants.

6. By the impugned order, the learned Civil Judge was persuaded to reject the application. The learned Civil Judge was of the view that the other plaintiffs were well aware of the factum of the death of plaintiff No.2 and despite several opportunities no steps were taken by the plaintiffs to bring the legal representatives of deceased plaintiff No.2 on record. A

huge and inordinate delay of 65 months and 10 days cannot be said to have been accounted for by the plaintiffs. Therefore, the application came to be rejected.

7. The learned Counsel for the petitioners submitted that the petitioners could not take steps to bring themselves on record as the parties were referred to mediation by the authorities under the MT&AL Act. A substantial period was also consumed on account of the situation which arose due to Covid-19 Pandemic. In the event, the petitioners are not permitted to bring themselves on record, their legal rights would be seriously jeopardized.

8. The learned Counsel for the respondents – defendants resisted the submissions on behalf of the petitioners. It was submitted that no reason has been ascribed to condone the huge delay. The impugned order does not suffer from such illegality which would warrant exercise of supervisory jurisdiction.

9. I have perused the averments in the application and the reply thereto. Indeed, there is delay in seeking setting aside of the abatement and bringing the legal representatives on record. It is a matter of fact that, the issue of tenancy was referred by

the Civil court to the authority under the MT&AL Act and the parties were, thereafter, referred to mediation.

10. Secondly, the nature of the suit assumes significance. The plaintiffs are seeking a declaration that late Naga Padu Gauri was the protected tenant in respect of the suit premises. Having regard to the nature of the relief sought in the plaint, the suit would not otherwise abate in its entirety.

11. Thirdly, in the matter of bringing the legal representatives on record, the Court is required to take a liberal approach. Ordinarily, the Court leans in favour of condonation of delay in bringing the legal representatives on record so as to advance the cause of substantive justice. A useful reference in this context can be made to the decision of the Supreme Court in the case of *Pankajbhai Rameshbhai Zalavadia vs. Jethabhai Kalabhai Zalavadiya (Deceased) through LRs & Ors.*¹, wherein even the legal representative of a party who had passed away before the institution of the suit, were permitted to be impleaded.

12. In the case at hand, the delay and inconvenience caused to the respondents can be taken care of by imposing appropriate conditions as to the time for disposal of the suit and costs.

13. Hence, the following order:

1 2017 (9) SCC 700

: O R D E R :

- (i) The Writ Petition stands allowed.
- (ii) The impugned order stands quashed and set aside.
- (iii) The delay in filing the application seeking setting aside of the abatement and to bring the legal representatives of deceased plaintiff No.2 stands condoned.
- (iv) The abatement stands set aside.
- (v) The applicants – petitioners are permitted to bring themselves on record as the legal representatives of deceased plaintiff No.2.
- (vi) Necessary amendment be carried out within a period of two weeks from the date of uploading of this order.
- (vii) The petitioners shall pay costs of Rs.10,000/- to the respondents collectively.
- (viii) The trial in RCS/244/20211 stands expedited.
- (ix) The petitioners upon their impleadment as plaintiffs and the other plaintiffs, shall not seek any adjournment for the hearing of the suit.

The petition stands disposed.

[N. J. JAMADAR, J.]