

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 382 OF 2026
WITH
INTERIM APPLICATION NO.3008 OF 2026
IN
FIRST APPEAL NO.382 OF 2026

Prakash S/o Gordhandas @
Govardhan Wadhuram Ahuja
adult, Indian Inhabitant, aged about 62 years
residing at Room No.141, Building No.1,
S.S. Nagar, Sion-Koliwada, Antop Hill,
Mumbai 400 037

...Appellant/
Org.Plaintiff

Versus

1. Municipal Corporation of Greater Mumbai
a Body incorporated under the provisions of
Law having office at Mahapalika Bhavan,
Mahapalika Marg, Mumbai 400 001
Through Asst. Municipal Commissioner
F/North Ward, Plot No.96, Bhaudaji Rd,
Near Maheshwari Circle, Brhmanwada,
Matunga (E), Mumbai, Maharashtra 400001

2. State of Maharashtra
through Inspector Incharge
Antop Hill Police Station,
To be served through Government Pleader
City Civil Court at Mumbai

...Respondents
Org. Defendant

*Mr. Anand Mishra a/w Ms. Priti Rao i/b Mr. Ashok M Saraogi for the
Appellant/Applicant*

Mr. Pradeep M. Patil for the Respondent No.1-BMC

Mr. D. J. Haldankar, A.G.P for the Respondent No.2-State

CORAM : SHARMILA U. DESHMUKH, J.

DATE : APRIL 20, 2026

ORAL JUDGMENT :

1. The First Appeal has been preferred challenging the impugned judgment dated 27th February 2026 passed by the City Civil Court, Mumbai, where the Suit filed by the Appellant came to be dismissed on the ground of limitation.
2. Briefly stated, the L.C. Suit No. 747 of 2025 was instituted by the present Appellant under Section 34/38 of the Specific Relief Act, seeking a declaration that the father of the Plaintiff, i.e. Gordhandas @ Govardhan Wadhuram Ahuja, who has been missing from 29th October 2012, be presumed as dead and accordingly the Respondent No.1, i.e. the Municipal Corporation of Greater Mumbai, to issue necessary Death Certificate in respect of the father of the Plaintiff.
3. It was pleaded that the father of the Plaintiff was found missing since 29th October 2012 and necessary complaint was given to the concerned police station on 7th November 2012. It was pleaded that on 18th November 2012, the Plaintiff had also published a notice in the newspaper. It was pleaded that after expiry of 10 years, an application was made to the concerned police station for seeking a certificate as regards the investigation which was carried out into the missing

complaint. The necessary certificate was issued on 20th July 2022 and the Suit came to be filed in February 2025.

4. By the impugned judgment, the Trial Court rejected the Suit on the ground of limitation by holding that the Suit was required to be filed within a period of three years on expiry of the period of 7 years from the date when the Plaintiff's father went missing. The Trial Court further held that the State of Maharashtra has not been impleaded as a party and the police authority is joined as a formal and necessary party.

5. Learned counsel appearing for the Appellant has taken this Court through the impugned judgment. He would further submit that the necessary police complaint was made when the Plaintiff's father went missing on 29th October, 2012. He would further point out that on 20th July, 2022, the certificate which was given by the police states that the investigation is still ongoing and as substantial time has elapsed, it is certified that the Plaintiff's father is permanently missing. He submits that the cause of action would arise within a period of 3 years of the certificate being issued on 20th July, 2022.

6. *Per contra*, Mr. Patil, learned counsel appearing for the Respondent No. 1, Municipal Corporation, would submit that one of the reasons why the Suit came to be dismissed was that the police was impleaded through the State of Maharashtra and that the State of Maharashtra was not impleaded independently. He submits that the

Trial Court has therefore held that the Respondent No. 2 is the police authority whereas the State of Maharashtra is the Government.

7. The point which arises for determination is whether the Suit is barred by limitation.

8. The Plaintiff has pleaded that on 29th October 2012, the Plaintiff's father had gone missing, in respect of which the police complaint was filed on 7th November 2012. Section 108 of the Indian Evidence Act 1872 provides that when the question is whether a man is alive or dead and it is proved that he has not been heard of for seven years, by those who would naturally have heard of him, if he had been alive, the burden of proving that he is alive is shifted to the person who appoints him. The said provision enables the Court to draw a statutory presumption that a person is not alive unless the contrary is proved by the opposite party. The statutory presumption would arise only on lapse of seven years and only when the question is raised in a Court or Tribunal. The Hon'ble Apex Court in the case of **LIC of India vs. Anuradha**¹, has held that so long as the dispute is not raised before any forum and in any legal proceedings, the occasion for raising the presumption does not arise. It is therefore clear that for the purpose of granting a declaration that the Plaintiff's father is presumed to be dead, a statutory presumption was required to be raised under Section

1 AIR 2004 SC 2070

108 of the Indian Evidence Act, which presumption would be raised only when the proceedings are filed before the Court. In the present case, as the Suit was filed in February 2025, the Court was required to raise the statutory presumption while adjudicating the Suit. In any event, the certificate of 20th July 2022 issued by the police authority, Antop Hill Police Station states that the investigation is still ongoing and it is only by reason of substantial period of time having been elapsed that the police have certified that the person has been permanently missing. As the investigation was ongoing, there was no occasion for the Plaintiff to file the necessary Suit for a declaration. The Suit which was filed subsequently cannot be therefore said to be barred by law of limitation.

9. Insofar as the non-joinder of the State of Maharashtra is concerned, there is no discussion that the presence of the State of Maharashtra was necessary for the effective adjudication of the dispute.

10. In light of the above, the following order is passed:

(1) The First Appeal is allowed.

(2) The impugned judgment dated 27th February 2026 is quashed and set aside.

(3) The Suit is decreed in terms of prayer clauses (a) and (b), which read thus:

"a) that this Hon'ble Court be pleased to declare that the father of the Plaintiff viz. Gordhandas @ Govardhan Wadhuram Ahuja who has been found missing with effect from 29/10/2012 is required to be presumed as dead and accordingly, the Defendants are bound and liable to issue necessary death certificate of the father of the Plaintiff on such terms as this Hon'ble Court may deem fit and proper.

b) that this Hon'ble Court be pleased to issue a mandatory order and direction directing the Defendants to forthwith issue such death certificate in respect of the father of the Plaintiff viz. Mr. Gordhandas Govardhan Wadhuram Ahuja who has been found missing with effect from 29/10/2012 on such terms as this Hon'ble Court may deem fit and proper."

(4) The Interim Application does not survive for consideration and the same is disposed of accordingly.

[SHARMILA U. DESHMUKH, J.]