

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 3730 OF 2025
IN
INTERIM APPLICATION NO. 251 OF 2021
IN
SUIT NO.835 OF 2015

Rushabh Sanghvi

...Applicant/Plaintiff

Versus

M/s Orbit Corporation Ltd. & Ors

...Defendants

Mr. Devashish Godbole a/w Ms Mehernaz Contractor, Ms Noomi Mehta, Shaily Jain i/b Mr. Akshay Bafna and Mr. Darshan Bafna c/o Bafna Law Associates for Applicant/Plaintiff.

Mr. P. Ranjan i/b Halai & Co. for proposed 3(a) & 3(b).

Mr. Harsh Moorjani for Official Liquidator.

Mr. Chetan Shelke, Deputy Official Liquidator present.

CORAM : ARIF S. DOCTOR, J.

DATE : 27th FEBRUARY 2026

P.C.

1. The Applicant has, by way of the present Interim Application, sought the following reliefs.

"a. This Hon'ble Court be pleased to condone delay of 856 days in filing Interim Application No. 251 of 2021.

b. This Hon'ble Court be pleased to condone delay of 856 days in filing an Application for setting aside abatement of Suit No. 835 of 2015 against Defendant No.3.

c. This Hon'ble Court be pleased to allow the Plaintiff / Applicant to bring on record the legal heirs of Defendant No.3 as stated in the schedule to this Application."

2. Mr. Godbole, learned counsel appearing on behalf of the Applicant at the outset, pointed out that Interim Application No. 251 of 2021 (“the First IA”) seeking the impleadment of the legal heirs of Defendant No. 3 had been allowed by vide an order dated 15th February 2021 however since the same did not specifically condone the delay and set aside the abatement of the Suit, the same was set aside in Appeal vide an order dated 27th June 2025, by which the Division Bench *inter alia*, held as follows:

“For the above reasons, we set aside the impugned order and request the learned Single Judge to decide Interim Application No. 251 of 2021 in Suit No. 835 of 2015 afresh after giving an opportunity of hearing to all the parties. We also grant the Plaintiffs liberty to formally apply for condonation of delay in support of the Interim Application. Such an application will have to be filed within 15 days from today, and both applications can be disposed of together after granting the defendants a reasonable time to file their reply.”

4. Mr. Godbole then pointed out that though Defendant No. 3 passed away on 9th August 2017 it was only by a communication dated 5th July 2019 the Applicants erstwhile Advocates were informed along with the names of seven legal heirs of Defendant No. 3. He submitted that thereafter there was a change in the Advocates for the Applicant. He pointed out that the Applicants new Advocates addressed a letter dated 16th January 2020 to the Advocates for the legal heirs of Defendant No. 3 seeking details of the legal heirs which was responded to by a letter dated 20th January 2020. He however pointed out that by this communication the names of only two legal heirs were given.

5. Mr. Godbole then submitted that before the Applicant could take further steps to implead the legal heirs of Defendant No.3 the COVID-19 pandemic struck and a nationwide lockdown was declared on 25th March 2020. Then the period between 15th March 2020 and 27th January 2021 stood excluded for the purposes of limitation as per the *Suo Moto* order passed by the Hon'ble Supreme Court.
6. Mr. Godbole then pointed out that the First IA was filed on 28th January 2021. He pointed out from the additional affidavit filed by the Applicant explaining the delay in filing the application. From the said Affidavit, he pointed out that the Applicant was not aware of the demise of Defendant No.3 prior to 5th July 2019 and that after being provided with the information, there was a change in advocates and then the COVID-19 pandemic struck.
7. In these circumstances, Mr. Godbole submitted that the Applicant had shown sufficient cause for condonation of delay and for setting aside the abatement as well as for bringing the legal heirs of Defendant No.3 on record. He submitted that it was well settled that the expression "sufficient cause" must receive a liberal construction. He submitted that such construction would advance the cause of substantial justice.
8. Mr. Godbole then placed reliance upon the decision of the Hon'ble Supreme Court in *Om Prakash Gupta @ Lalloowa (Deceased) through LRs v. Satish Chandra (Deceased) through LRs*,¹ to point out that the Hon'ble Supreme Court explained the scheme under Order XXII of the

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CPC and held that an Application for substitution which was filed beyond 150 days would have to be accompanied by an prayer for condonation of delay and setting aside of the abatement.

9. Mr. Godbole also relied upon the decision of the Hon'ble Supreme Court in *Mithailal Dalsangar Singh & Ors. v. Annabai Devram Kini & Ors.*,² to point out that the same specifically held that applications for setting aside abatement should be considered liberally. He also pointed out that the Hon'ble Supreme Court had also observed that a prayer for bringing legal representatives on record may, in substance, be treated as including a prayer for setting aside abatement and that an overly technical or pedantic approach in such matters was not warranted.

10. On the basis of the above submissions, Mr. Godbole submitted that the delay deserved to be condoned and the abatement set aside for the reasons set out in the Interim Application and the Additional Affidavit.

11. Mr. Ranjan, learned counsel appearing on behalf of Respondent No. 3a. opposed the Interim Applications on the ground that the Applicant had failed to show sufficient cause. He did not dispute that the Applicant had been informed about the demise of Defendant No.3 only on 5th July 2019 however his contention was that the Applicant had despite so being informed, not taken any steps to set aside the abatement and implead the legal heirs of Defendant No. 3 for over one and a half years.

12. Mr. Ranjan submitted that the Applicant cannot take shelter under the fact that there was a change of Advocates, since the Applicant had already

2 (2003) 10 Supreme Court Cases 691

been furnished with the relevant information regarding the death of Defendant No. 3 and the details of the legal heirs. According to him, the Applicant had therefore failed to discharge the burden of establishing sufficient cause.

13.Mr. Ranjan then placed reliance upon the decision of the Hon'ble Supreme Court in *Balwant Singh (Deceased) v. Jagdish Singh & Ors.*,³ to point out that the Hon'ble Supreme Court had emphasised that the burden of demonstrating sufficient cause lies upon the applicant seeking condonation of delay. He submitted that once a Suit had abated, the principles governing condonation of delay under Section 5 of the Limitation Act apply with equal force to applications for setting aside the abatement. He submitted that mere allegations of belated knowledge of death, or change of advocates would not by themselves constitute sufficient cause unless supported by credible explanation demonstrating no lack of diligence.

14.In these circumstances, Mr. Ranjan submitted that the Applicant had failed to establish sufficient cause for condonation of delay and that the Interim Applications therefore deserved to be dismissed.

15.I have heard the learned counsel for the parties and have considered the rival submissions as well as the material placed on record.

16.The question that arises is whether the Applicant has shown sufficient cause for the delay in seeking substitution and setting aside the abatement.

3 (2010) 8 Supreme Court Cases 685

17. Having heard Learned Counsel for the parties, I find that the Applicant has shown sufficient cause to have the delay condoned at the abatement of the Suit set aside. The Second IA and the Additional Affidavit in my view adequately show sufficient cause. The Hon'ble Supreme Court has in *Mithailal Dalsangar Singh v. Annabai Devram Kini*, held that applications for setting aside abatement should ordinarily be considered liberally since abatement results in denial of adjudication on the merits. Similarly, in *Om Prakash Gupta v. Satish Chandra*, the Supreme Court also sets out that once sufficient cause is shown for the delay, the abatement may be set aside so that the matter may be decided on merits.

18. The decision in *Balwant Singh v. Jagdish Singh* upon which reliance was placed by Mr. Ranjan undoubtedly reiterates that the burden of establishing sufficient cause lies upon the applicant and that the Court must scrutinise the explanation offered. However, the said decision equally recognises that the expression "sufficient cause" must be applied in a pragmatic and justice-oriented manner depending upon the facts of each case.

19. In the present case, although there was some delay after the communication dated 5th July 2019, the subsequent sequence of events, including the change of Advocates, the request for confirmation of the legal heirs, and the onset of the COVID-19 pandemic followed by the exclusion of limitation directed by the Hon'ble Supreme Court, sufficiently explains the delay. In these facts, in my view, the substantive cause of justice would best be served if the Application is allowed and the

Suit be decided on merit.

20. Hence, for the aforesaid reasons, the Interim Application is allowed and disposed of.

[ARIF S. DOCTOR, J.]