

**Order below Exh.32 in Reg. Civil Appeal No.26/2003**

1. This is an application filed by the appellant seeking to set-aside abatement of appeal.
  
2. The appellant had made application Ex.34 for condoning the delay for making application for taking the legal heirs on record. The appellant has contended that respondent No.1 Bayajabai has died on 25.03.2004, respondent No.4 Motilal has died on 14.04.2019 and respondent No.9 Harnabai @ Laxmibai has died on 12.09.2020. However, the appellant could not bring the legal representatives on record within the time permitted and as such the appeal stood abated. The appellant contended that the delay of 4 years 5 months and 10 days to bring the legal heirs on record is not deliberate and same may be condoned. The appellant has sought for setting aside abatement of the Appeal and allow him to bring Legal Representatives on record.
  
3. The respondent has resisted the application contended that there is inordinate delay in making the application for bringing the legal heirs on record. He contended that the reason for the delay has not been properly explained by the appellant. The respondent further contended that the appellant had filed appeal bearing No.36/2021 before the Hon'ble High Court without bringing on record legal heirs of the respondent No.4 Motilal

and respondent No.9 Harnabai @ Laxmibai and as such the aforesaid decision in appeal bearing No.36/2021 cannot be considered to be legal. The respondent wished to reject the application.

4. In view of order made below Application Ex.36, the delay for making application to bring Legal Representatives has been condone for the elaborate reasons given while deciding that application. It could be thus justifiable to set aside abatement of the Appeal to meet the ends of justice and allow the appellant to bring on record the legal Representatives of the deceased respondent Nos.1, 4 & 9 by condoning the delay for making application in that regard. This because, I do not find gross negligence or deliberate negligence which would dis-entitled the appellant from bringing the legal heirs on record. Therefore, it is the fit case to exercise discretion to set-aside abatement of appeal.

5. In the result, the following order is made :

**ORDER**

1. The application is allowed.
2. The abatement of appeal stands set-aside.
3. The application is accordingly disposed-of.

Date : 20/03/2024.

( **D.S. Ghumare** )  
District Judge -1,  
Sangamner.