

MHAH070010812015



**COMMON ORDER BELOW EXH .22 AND 24 IN R.C.A.NO.80/2015**  
**( Dattu Soma Barde Vs. Kashabai Dongre and another )**

1. Application exhibit 22 is filed for condonation of delay caused is bringing the legal representatives of deceased appellant on record and to set aside the abatement against him. Application exhibit 24 is filed for bringing legal representatives of deceased appellant on record. The sum and substance of both the applications is that, during the pendency of the appeal, the appellant expired on 14.11.2021. The applicants were not aware about pendency of this appeal. After receiving the notices of darkhast to execute the decree they got knowledge of present appeal. It has caused delay in bringing the L.Rs. on record as well as appeal is abated. They have stated that, the delay was unintentional and prayed to allow the applications.

2. The respondent no.1 opposed the application vide reply exhibit 33. All the averments in the application have been denied. It is submitted that, already appeal is abated. There is no reason to condone the delay. They cannot claim for setting aside abatement as of right. Therefore, it is prayed to reject the application.

3. Heard the Ld. Advocates for the parties. Present appeal is filed against the judgment and decree passed by Ld. Civil Judge Junior Division, Akole in Regular Civil Suit No.42/2012. By that judgment suit filed by respondent no. 1 for the recovery of the money is partly decreed. During the pendency of the appeal the only appellant has expired on 14.11.2021 as seen from copy of death certificate. It was necessary to bring his legal representatives on record within 90 days therefrom. Thereafter, appeal abated and abatement was not set aside within 60 days.

Present applications have been filed on 27.03.2024. Thus, it appears that, after about delay of three years present applications have been filed. The appeal was pending for payment of paper-book charges. It is seen that, for some period the court working was also affected due to pandemic Covid-19. The applicants have given reason that they were not aware of pendency of appeal and after receipt of notices of execution application they got knowledge about it. The reason is probable. It did not appear that, the delay caused was intentional. The cause of action survives against the applicant. Appeal is continuation of suit. The evidence can be once again appreciated in appeal. In order to decide the appeal on merits it would be proper to condone the delay caused and set aside the abatement. At the same time, it cannot be ignored that after three years application to bring legal representatives on record has been filed. Hence, it is necessary to impose costs on the applicants. In the result following order is passed :-

**: ORDER :**

1.	Applications Exhibit Nos.22 and 24 are allowed subject to payment of costs of Rs.5,000/- (Rupees Five Thousand only) to be paid to respondent no. 1 on or before 09.03.2026.
2.	The delay caused in bringing legal representatives of appellant on record is hereby condoned and abatement is set aside after payment of costs.
3.	The legal representatives of appellant be brought on record and necessary amendment be carried out after payment of costs within one week.

Date -20/02/2026.

( M. M. Shaikh )  
Ad-hoc District Judge-1,  
**Sangamner.**