

MHCO120000011997**IN THE COURT OF JUDGE, CO-OPERATIVE COURT NO
I, PUNE.****(Presided over by Smt. Anju Jadhav Judge)****Dispute No.466/1997****Girish Co-operative Housing
Society Ltd.,****:-Disputant****V/s****Shanu Patel and others.****:- Opponents****ORDER BELOW EXH. NO. 210
(Decided on 17/06/2026)**

1. The disputant society has filed the present application for condoning the delay to bring the legal heirs on record. It is submitted that present dispute has been filed by the disputant seeking a declaration that the alleged resolution Nos. 8 and 9 passed in the Annual General Meeting dated 31/01/1998 are illegal and not binding upon the disputant society and further seeking a mandatory order directing the opponents to remove the construction carried out by them over the dispute property, the same being illegal and unauthorized.

2. Opponent No. 1 had appeared in the present dispute and had filed his written statement at Exh.109. During the

pendency of the present dispute before this Hon'ble Court, opponent No. 1 expired on 20/05/2025. However, no information regarding the death of opponent No. 1 was communicated to the disputant by the advocate representing opponent No. 1. Further, the disputant had no knowledge as to who are the legal heirs of opponent No.1.

3. The disputant society made efforts to obtain the death certificate of opponent No. 1 and to ascertain the legal heirs of opponent No.1 however, despite making such inquiries; the plaintiff could not ascertain the legal heirs of opponent No.1 on record within the prescribed period of limitation.

4. The disputant submits that the disputant has only recently come to know about the death of opponent No. 1. Thereafter, the disputant society obtained the death certificate of opponent No.1. It is stated that since all office bearers of the disputant society are senior citizens, the said information could not be promptly communicated to the advocate for the disputant. Consequently, the advocate for the disputant society could not file the application for bringing the legal heirs of opponent No. 1 on record within the prescribed period. Thus, there is a delay of 240 days in filing the present application for bringing the legal heirs on record.

5. Legal heir of opponent No. 9 Mrs. Meghana Charudatta Nijasure has filed the reply at Exh-220 and submitted that Mr. Ramakrishna Dattatray Gadgil expired on 20/05/2025.

Mrs. Meghana submits that her father i.e. opponent No. 9 was residing in the said society since 1989 and expired on 20/05/2025. After his demise, the legal heirs submitted an application to the society requesting society to transmit/transfer membership of the society in their favour in respect of plot No. 65, as per the "Will" executed by the opponent No. 9 on 24/05/2025 only. Mr. Gokhale, secretary of the society has received the said application and acknowledges the application on 24/05/2025. It clearly shows that disputant society was aware about demise of the defendant No. 9 and about his legal heirs on 24/05/2025 only. Therefore, it is immaterial that Advocate for the opponent no. 9 informed to the disputant or his Advocated in respect of death of the opponent No.9. Irrespective of the fact that, the disputant was aware about the demise of opponent No.9, the disputant society failed to bring legal heirs on record in the specified period of 90 days and there is delay of 240 days to bring legal heirs on record. The reason given by the disputant is totally false, misleading and baseless to consider condoning the delay in bringing legal heirs of the opponent No.9 on record. Hence, the present application deserves to be dismissed.

6. Opponent no. 9-B has filed say at Exh. 225 and denied the contentions of the application and further submitted that the disputant society was aware the death of opponent No. 9 on 24/05/2025 itself. But disputant has suppressed

material facts. The present application does not spell of the due diligence, rather spells of malafide and the disputant there by is not entitled to any legal and equitable reliefs.

7. It is submitted that the alleged causes of action against opponent No.9 was purely personal, the cause of action did not survive and the cause has abated as against him on account of his death. Eventually, the question of condonation of delay does not arise at all and therefore requested to reject the application.

8. Heard Ld. Adv. Shri. Maidargi for disputant and Ld. Adv. Mrs. M. M. Parasnis for opponent No. 9-A and Ld. Adv. Shri. Chandrashakher Jadhav for opponent No. 9-B.

REASONS

9. During the course of arguments, the Ld. Counsel appearing for opponent No. 9-A invited my attention to an application dated 24/05/2025 submitted by the legal heirs of deceased opponent No. 9 to the Chairman and Secretary of the disputant society. By the said application, the legal heires of deceased opponent No. 9 requested the society to transfer the membership pertaining to plot No. 65 in their favour. It was vehemently contended that the said application clearly demonstrates that the disputant society had prior knowledge of the demise of opponent No.9. In support of the said contention, reliance was placed upon the

acknowledgment issued by the secretary of the disputant society.

10. Accordingly, it was argued that the society cannot now contend that it was unaware of the death of opponent No. 9, as the record itself establishes due intimation of the said fact.

11. Counsel for disputant argued that the society came to the know recently with respect to the death of opponent No. 9. Thereafter disputant society collected the death certificate of opponent No. 9. He further argued that the office bearers are the senior citizen and they could not inform to the advocate regarding the death of opponent No. 9.

12. Counsel for opponent no. 9-B argued as per the application and to support his argument he relied upon a case Balawanshing (dead) Vs Jagdish Singh and others, AIR 2010 Suprem Court 3043. In this case the Hon'ble Supreme Court held in para nos. 13, 14 and 16 that:

Even if the term 'sufficient cause' has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the concerned party. The purpose of introducing liberal construction normally is to introduce the concept of 'reasonableness' as it is understood in its general connotation. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be

adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right, has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.

Sometimes the Courts have taken a view that delay should be condoned with a liberal attitude, while on certain occasions the Courts have taken a stricter view and wherever the explanation was not satisfactory, have dismissed the application for condonation of delay. Thus it is evident that is difficult to state any straight jacket formula which can uniformly be applied to all cases without reference to the peculiar facts and circumstances of a given case. It must be kept in mind that whenever a law is enacted by the legislature, it is intended to be enforced in its proper perspective. It is an equally settled principle of law that the provisions of a

statute, including every word, have to be given full effect, keeping the legislative intent in mind, in order to ensure that the projected object is achieved. In other words, no provisions can be treated to have been enacted purposelessly. Furthermore, it is also a well settled canon of interpretative jurisprudence that the Court should not give such an interpretation to provisions which would render the provision ineffective or odious. Once the legislature has enacted the provisions of O. 22, with particular reference to Rule 9 and the provisions of the Limitation Act are applied to the entertainment of such an application, all these provisions have to be given their true and correct meaning and must be applied wherever called for. To say that the Court should take a very liberal approach and interpret these provision (Order 22, Rule 9 of the CPC and Section 5 of the Limitation Act) in such a manner and so liberally, irrespective of the period of delay, it would amount to practically rendering all these provisions redundant and inoperative.

Delay is just one of the ingredients which has to be considered by the Court. In addition to this, Court must also take into account the conduct of the parties, bona fide reasons for condonation of delay and whether such delay could easily be avoided by the applicant acting with normal care and caution. The statutory provisions

mandate that applications for condonation of delay and applications belatedly filed beyond the prescribed period of limitation for bringing the legal representatives on record, should be rejected unless sufficient cause is shown for condonation of delay. Thus, it is the requirement of law that these applications cannot be allowed as a matter of right and even in a routine manner.

13. Facts of the above case and case in hand are totally different hence, the above cited cases are not applicable to the present case.

14. **Vinayak Purushottam Dube (deceased) Through LRS V/s Jayshree Padmakar Bhatt, AIR 2024 Supreme Court 1386**, *in this case the Hon'ble Supreme Court observe that the LRS of deceased are not liable to discharge obligation, which had to be discharged by deceased by personal capacity*

Para No. 23 the Hon'ble Supreme Court held that the legal representative means a person who in law represent estate of deceased person, includes any person who intermeddles with estate of deceased and where a party sues or issued in a representative character person on whom estate devolves on death of party so suing or sued. Thus, legal representatives of a deceased are liable only to extent of estate, which they inherit.

15. The disputant society has filed the present dispute for declaration that the resolution Nos. 8 and 9 passed in the AGM dated 03/07/1988 and the same is not binding on the disputant society. Disputant society has sought the damages from the opponents.

16. It is pertinent to note that serious allegations have been levelled against the opponents in the present dispute, and disputant society has sought compensation and damages from them. In the event that the allegations are established before this Court, the opponents shall be liable to satisfy the claim for damages. Although opponent No.9 has expired, his estate remains liable for any compensation or damages that may be adjudged against him. Therefore, opponent Nos. 9A and 9B, being the legal representatives and successor to the estate of the deceased opponent No.9 are necessary and proper parties for the effective complete adjudication of the present dispute. The case which is relied by opponent no. 9-B **Vinayak Purushottam Dube (deceased) Through LRS V/s Jayshree Padmakar Bhatt**, is squarely applicable to the present case.

17. Merely because the secretary of the disputant society was aware of the death of opponent No. 9, it cannot be presumed that he was also aware of, or had furnished instructions to the Advocate regarding the particulars of the legal heirs and representative of the deceased. The objection raised by opponent No. 9-A in the reply cannot, by itself,

constitute a valid ground for rejection of the present application. In view of the allegations made by the disputant society against the opponent and considering that the estate of the deceased opponent No.9 may be affected by the outcome of the proceedings, the impleadment of opponent Nos.9-A and 9-B is necessary for the just, proper, and effective adjudication of the dispute. Accordingly, the present application deserves to be allowed.

18. The applicants have explained the delay. The explanation offered by the disputant society appears to be reasonable and there is no material on record to show that the delay was deliberate and intentional.

19. It is well settled that the provisions relating to limitation should be applied in manner that advances the cause of justice. When sufficient cause is shown, delay can be condoned under Section 5 of the Limitation Act, 1963. In the present case, the explanation given by the applicants constitute sufficient cause for condonation of delay.

20. Considering the facts and circumstances of the case, this court of opinion that if the delay is not condoned, the disputant would be deprived of an opportunity to prosecute the dispute on merits. No serious prejudice would be caused to the legal heirs of

deceased opponent no. 9 if the delay is condoned. Hence, the following order.

ORDER

1. The application for condonation of delay is hereby allowed.
2. The delay for bring the legal heirs of opponent no. 9 is condoned.
3. No order as to cost.

Date: 17/06/2026
Place: Pune

(Smt. Anju Jadhav)
Judge,
Co-operative Court No. I, Pune