

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. 208
(Decided on 20/06/2026)**

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 03/07/1988 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 and therefore the present dispute is abated against the opponent No. 9. The disputant requested that the order of abatement against opponent No. 9 may kindly be quashed and in place of opponent No. 9 his legal heirs may kindly be taken on record.

4. Legal heir of opponent No. 9 Mrs. Meghana Charudatta Nijasure has filed the reply at Exh-219 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.

5. 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 from the death of opponent No. 9, and therefore the dispute is automatically abated against deceased opponent No. 9. The reason given by the disputant is totally false, and hence the same should not be considered to set aside the abatement order. Hence, the present application deserves to be dismissed.

6. Opponent no. 9-B has filed say at Exh. 226-A 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. All material averments against the opponent No. 9 were personal against him and in his alleged capacity as an

office bearer of the disputant society. Moreover, the primary and substantial relief of removal of encroachment, possession, etc. is claimed by the disputant exclusively against opponent No. 1 and no any specific and general reliefs are claimed against opponent No. 9.

8. Proposed opponent No. 9b, therefore, states that alleged causes of action, if any, against opponent No. 9 have come to an end on his death. Eventually, those causes of action do not survive against his LR's i. e. proposed opponent Nos. 9a and 9b. Survival of cause of action against LR's of opponent No. 9 is condition precedent for bringing his LR's on record.

9. Proposed opponent No. 9b contended that a casual and cavalier averment in the application that LR's of opponent No. 9 are to be brought on record on account of death of opponent No. 9, for further trial and execution of the proposed decree does not fulfil requirements of order 22 Rule 4 of the Civ. P. Code. On the contrary, none of the ingredients under said provision have been made out; nor do such ingredients exist meriting any consideration. As such, the application for bringing of LR's of opponent No. 9 on record is misplaced, misconceived and unsustainable in law and therefore, requested to reject the application.

10. 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

11. It is well that where sufficient cause is shown, delay can be condoned in order to advance substantial justice under Section 5 of the Limitation Act, 1963. Further, when the right to sue survives, the court may set aside the abatement if sufficient cause is shown under Order XXII Rule 9 of the Code of Civil Procedure, 1908.

12. Considering the facts and circumstances of the case, this court is of opinion that the disputant has satisfactorily explained the delay. If the abatement is not set aside, the disputant would be deprived of an opportunity to prosecute the matter on merits. On the other hand, no serious prejudice would be caused to the opponents, if the abatement is set aside. Hence, the following order.

ORDER

1. The application is allowed.
2. The abatement is set aside.
3. Necessary amendment be carried out in the record.
4. No order as to cost.

Date: 20/06/2026
Place: Pune

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