

COMMON ORDER BELOW EXHIBITS-192 & 194

As per order dated 07.03.2026, this application was kept for the compliance by the plaintiff No.D on 12.03.2026 and for further order.

02. On 12.03.2026 the plaintiff No.D complied the directions and produced the documents along with list at Exh.209 i.e. photo copy of death certificate Ashok Baliram More and the Smashan Parwana Receipt, Sambhajnagar showing the name of Nilkanth Baliram More. Also, filed the list of legal heirs of deceased plaintiff No.1C namely Shobha - wife, Rajshree, Lata, Arati - daughters residing at Sambhajnagar. Further, the legal heirs of deceased plaintiff No.1F namely Ashok showing Gita, Saurabh, Pooja, Megha, Veena are legal heirs.

03. Already, the death certificate of Mathurabai Ambrushi Dighe plaintiff No.1A is given at Exh.198 and death certificate of Nanda Tukaram Mane plaintiff No.1E given at Exh.199. It is stated in this application that, plaintiff No.1A, 1C, 1E and 1F died. The other plaintiffs have give P.O.A. to plaintiff No.1D, now they are not approaching him, therefore, this application for delay condonation along with transposition them as defendants. The plaintiff has also filed application at Exh.194 for taking the legal heirs of deceased plaintiff Nos.1A, 1C, 1E and 1F on record transposing them as defendants.

04. On the other hand, the Advocate for defendant Nos.2 to 4 vehemently argued that, they have filed say to Exh.192 only. The Exh.192 is to be decided first, then only they will file say to Exh.194.

Further argued that, Exh.192 itself is not tenable on the ground that, suit is abated as a whole and also no prayer for abatement set aside along with delay condonation and also not tenable as transposition is sought of the legal heirs of the deceased plaintiffs as defendants, which cannot be allowed.

05. It is settled law that Order XXII rule 1 of the CPC provides that when a party to a suit passes away, the suit will not abate if the right to sue survives. The procedure for bringing on record the legal representatives of a deceased Plaintiff and a deceased defendant are provided in Rules 3 and 4 respectively of Order XXII. Sub-Rules 3 and 4 of Order XXII of the CPC stipulate that the Suit automatically abates when an application to substitute the legal representatives of a deceased party is not filed within the prescribed limitation period of 90 days from the date of death as stipulated by Article 120 of the Limitation Act 1963. In the event the Plaintiff obtains knowledge of the death of a Defendant after the aforesaid period of 90 days and the suit has already abated, the remedy available is to file an application under Sub-Rule 9 of Order XXII seeking to set-aside the abatement, the limitation period for which is stipulated in Article 121 of the Limitation Act which allows a period of 60 days to file such an application. From a reading of Articles 120 and 121 of the Limitation Act, it emerges that the total time-frame to file an application for substitution of legal heirs and to set-aside the abatement is 150 days viz. 90+60. Between the 1st and the 90th day after the death, the suit does not automatically abate, between the 91st and the hundred and 50th day after the death, the suit stands abated and the Plaintiff therefore must seek to set-aside the abatement in addition to seeking

substitution. On the hundred and 51 st day, however, this remedy becomes time-barred and consequently any request to set-aside the abatement must be accompanied by request under Section 5 of the Limitation Act seeking condonation of delay for filing such an application. Sub-Rule 3 of Rule 9 of Order XXII of the CPC expressly stipulates that the provisions of Section 5 of the Limitation Act shall apply to such an application under Sub-Rule 9 of Order XXII seeking to set-aside the abatement. This procedure is to be followed in order to substitute legal heirs and to set-aside abatement.

06. However, I deem fit to rely upon the following case law :- ***Mithailal Dalsangar Singh V. Annhabai Devram Kini. (2003) 11 SCC 606.*** Wherein it is held that, a simple prayer for bringing legal representatives on record without specifically praying for setting aside of an abatement may in substance be construed as a prayer for setting aside abatement and that this Application be construed as one also seeking to set aside the abatement of the Suit.

07. Therefore, the present application is for delay condonation, the prayer in this application is for delay condonation along with application filed for taking legal heirs on record. It means that, the present application is for delay condonation, and separate application is filed for taking legal heirs on record (Exh.194), even it is without the prayer of setting aside and abatement, it is to be construed as a prayer for setting aside abatement and that this application be construed as one also seeking to set aside the abatement of the Suit (***Mithailal***). On this count, the objection of defendant Nos.2 to 4 Advocate cannot be considered.

08. Now, further question remains, the plaintiff No.D in this application claiming that, the legal heirs of other deceased plaintiff Nos.1A, 1C, 1E and 1F delay is to be condoned for transposing them as defendants.

09. In this facts and circumstances, it is admitted position that, plaintiff expired and suit is abated. I deem necessary to rely upon following case law:- ***Kanis Fatima and Another vs. Mohd. Habib and Another*** where it is observed that, in a case where a Suit has abated, without notice to the parties, who are sought to be impleaded as legal representatives under Order XXII of the CPC and who have a legal right to object and for hearing, the said legal representatives cannot be impleaded without issuance of notice as want of notice in such proceedings goes to the root of the matter.

10. In view of above ratio of cited case law, the plaintiff No.D not only making application for delay condonation (Exh.192) and application for taking legal heirs on record with prayer of transposition with other defendants (Exh.194), I am of the view that, the said legal representative have legal right to object and this application at Exh.192 and Exh.194 cannot be proceed without notice to them.

11. In this background, admittedly, in this application plaintiff No.D giving the names of deceased plaintiffs, however, no detail given along with all death certificates. Therefore, directions were given to the plaintiff No.D on 07.03.2026. The plaintiff No.D has partly complied as per Exh.209 and Exh.208. Moreover, the details names of proposed legal heirs are given below Exh.194. In my

view, before considering the Exhs.192 and 194 on the basis of objection raised, the relief claimed by the plaintiff No.D in the said applications, the proposed legal heirs are to be served with notice calling objection if any.

12. No doubt, the matter is time bound by Hon'ble Apex Court, the plaintiff No.D is trying to co-operate for disposing of suit within the time limit by transposing the other plaintiffs as a defendants. Even saying so, the legal and procedure aspect and objection cannot be overseen. Keeping all objections raised by defendant Nos.2 to 4 kept open for argument and deciding Exh.192, I am of the view that, proposed legal heirs have to be given opportunity by issuing notice on the both applications Exhs.192 and 194. Therefore, I proceed to pass the following order :-

ORDER

01. Issue notice to the proposed heirs as per details of names given in Exh.192, 208 and Exh.194 returnable on 18.03.2026.
02. The concerned clerk to comply the above directions forthwith under supervision of Asst. Superintendent of this Court.
03. Further, the Ld. Advocate for the plaintiff No.D is requested to supply copies forthwith of Exh.192, 208 and 194 for above compliance. Moreover, the plaintiff No.D is at liberty to secure the notice to the proposed legal heirs via electronic / digital means / by hand or any other option available if possible or secure their

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presence on next date in the Court for appearance and
filing say to the Exhs.192 and 194 if any.

04. Copy of this order kept with Exh.194 for compliance.

Date:- 13.03.2026

(P. B. Lokhande)
Civil Judge, Senior Division, Barshi.

C E R T I F I C A T E

I affirm that the contents of this PDF file Order / Judgment are same word to word, as per the original Order / Judgment.

Name of the Stenographer	: Shripad N. Chilka, Steno Grade-2.
Court	: Civil Court Senior Division, Barshi.
Judgment/Order signed by the P. O. on	: 13.03.2026
Judgment / Order uploaded on	: 13.03.2026