

COMMON ORDER BELOW EXHIBITS-192 & 194

The common order passed below on Exh.192 and 194 dated 13.03.2026 is hereby reproduced as under for sake of convenience and understanding the chain of incidents as under:

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, Sambhajinagar 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 Sambhajinagar. 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 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

Sd/-xxx
(P. B. Lokhande)
Civil Judge, Senior Division, Barshi.

02. In view of above order, the plaintiff No.D has taken steps to serve notice to the legal heirs of deceased plaintiff and produced the

RPAD receipts and tracking report of post office along with Exh.230. It discloses that, the notices are delivered to the legal heirs except one legal heir. Therefore, the plaintiff No.D has complied directions passed below Exh.192 and common order below Exh.192 and 194.

03. In the meantime, after the above order, the defendant Nos.2 to 4 filed say to Exh.194 at Exh.227. It is contended that, application at Exh.194 is not tenable. The defendant No.1D is one of the legal heir of deceased Baliram More, they are close relatives, the other plaintiff Nos.A, B, C, E, F and G have given P.O.A. dated 04.11.2008 to plaintiff No.D, who has represented them in this Civil proceeding, before Hon'ble High Court and Hon'ble Supreme Court. The reason given that, the legal heirs of the deceased plaintiffs are residing at Pune, Sambhajinagar, Pandharpur, no contacts from 15 to 16 years cannot be accepted as the plaintiff No.D has filed death certificate at Exhs.189 and 199 at the relevant time of the death. Moreover, the death certificates at Exh.203 and 204 also discloses that, plaintiff No.D having knowledge of the death of plaintiffs.

04. Moreover, the plaintiff No.D is also claiming to transpose the legal heirs of the deceased plaintiffs as defendants is illegal and does not come within the purview of Order XXIII Rule 1A and Order I Rule 10A of CPC. The deceased plaintiffs and the plaintiff No.D interest are not contrary to each other. The interest of the deceased legal heirs of the plaintiffs are not in consonance with the defendant Nos.1 to 4. The legal heirs of the plaintiffs can proceed as legal heirs of deceased plaintiffs in this suit. The plaintiff No.D trying to delay the proceedings, even Hon'ble Apex Court has directed to dispose of

suit within the time limit. If application is allowed to transpose legal heirs of deceased plaintiffs as defendants, there will be multiple complications in the rights of the plaintiffs and the defendants.

05. Further contended that, there is 11 years, 10 months and 18 days delay for deceased plaintiff No.1A, delay of 3 years, 3 months and 29 days for plaintiff No.1C, delay of 1 year, 11 months and 3 days for plaintiff No.1E and delay of 6 years, 8 months and 12 days for plaintiff No.1F. As per the order of Hon'ble High Court, stay order was vacated. Therefore, the period of moving Special Leave Petition before Hon'ble Apex Court, there was no stay order, the plaintiff No.D could have taken the steps, no reasons for the same given in the application. In Civil Appeal No.14823/2025 order passed on 12.12.2025, no sufficient reason given from the date of order till 10.10.2026. Further, Limitation Act Section 15 provides that, even there is stay order for the proceeding, it will not effect the steps to take the legal heirs on the record. Therefore, application at Exh.194 be rejected.

06. In support of argument, the Ld. Advocate for defendant Nos.2 to 4 vehemently argued and relied upon following case laws:

1. ***Hemareddi (D) Through LRS Vs. Ramachandra Yallappa Hosmani & Ors, (2019) 4 WBLR 470 (SC)*** decided on 07.05.2019 wherein it is held that :

Civil Procedure Code, 1908 (CPC) – Order 22 Rules 3 & 4 – Abatement of suit/appeal on death of party – Joint decree vs. Severable decree – Principles of determining complete abatement after partial abatement – Where multiple plaintiffs/appellants have joint rights and the decree is joint and indivisible, the death of one plaintiff/appellant and subsequent abatement of the suit/appeal

against them, due to failure to bring legal representatives on record, will lead to the abatement of the entire suit/appeal if allowing the suit/appeal to proceed for the remaining parties would result in a decree inconsistent with the decree that has become final against the deceased party.

2. *Gauri Shankar Singh and Anr. Vs. Smt. Jwalamukhi Devi and Ors. AIR 1962 PATNA 392* wherein it is held that :

(B) Civil P.C. (5 of 1908), O.22 R.4, O.22 R.11 – Death of one of respondents pending appeal – One of legal representatives already on record – Application by appellants as well as other legal representatives for Substitution beyond limitation – Applications held could not be allowed – Suit held abated as a whole.

07. I have gone through the above cited case laws, wherein it is held that, where multiple plaintiffs/appellants have joint rights and the decree is joint and indivisible, the death of one plaintiff/appellant and subsequent abatement of the suit/appeal against them, due to failure to bring legal representatives on record, will lead to the abatement of the entire suit/appeal and death of one of respondents pending appeal, if one of legal representatives already on record, application by appellants as well as other legal representatives for substitution beyond limitation, applications held could not be allowed, suit held abated as a whole. In the present suit is in hand, the fact is that, an application for amendment came to be rejected was challenged before Hon'ble High Court, stay was granted to the proceeding. Thereafter, order passed by the Hon'ble High Court, it was challenged before Hon'ble Apex Court. It is a matter of fact that, Hon'ble Apex Court allowed the plaintiffs to cause amendment and directed the this Court to dispose of the suit within the period of six months after the amendment is carried out by the plaintiff. The plaintiff has complied directions of the Hon'ble Apex Court. However, in the meantime, the

plaintiff Nos.1A, 1C, 1E and 1F expired. An application by plaintiff No.D at Exhs.192 and 194, the directions were given to the plaintiff No.D as per above detail order. The plaintiff No.D has taken steps. In view of above facts and circumstances in the present suit, the ratio of the above cited case laws will not be helpful to support an argument of Ld. Advocate for defendant Nos.1 to 4.

08. Admittedly, the suit is filed for cancellation, perpetual injunction and (after amendment allowed by Hon'ble Apex Court) for possession. Only question is the delay caused by plaintiff No.D to take legal representatives of the deceased plaintiff Nos.1A, 1C, 1E and 1F can be condoned or not. In my view, there was stay order of Hon'ble High Court and after the order of Hon'ble High Court and the matter was before the Hon'ble Apex Court. Thereafter, Hon'ble Apex Court allowed the amendment of the plaintiffs, the effect is given at Exh.1 and matter is kept for hearing on day to day basis. In this background, the ground, due to stay of Hon'ble High Court, no steps were taken by the plaintiff No.D, can be considered justified reason for delay.

09. However, the relationship with the plaintiff No.D and deceased plaintiff Nos.1A, 1C, 1E and 1F, the death certificates produced by the plaintiff No.D goes to show that, he was having knowledge of the death of the plaintiffs and their legal heirs. He could have brought the above facts before the Hon'ble High Court and Apex Court, where the legal heirs of the deceased plaintiffs could have been taken on the record. It is not done so, on this point, I am of the view that, the plaintiff No.D has to be saddle with heavy costs. Another point i.e. delay condonation and taking legal heirs on record by

transposing them as defendants, involves the issue of joint and indivisible right, it can be consider after the legal heirs of the deceased plaintiffs are taken on record by the plaintiff No.D as plaintiffs. Therefore, the said prayer to that extent in application at Exhs.192 and 194 is liable to be rejected. In view of above discussion, I proceed to pass the following order:

ORDER

01. The prayer of plaintiff No.D below Exhs.192 and 194 to the extent of transposing the legal heirs of the deceased plaintiff Nos.1A, 1C, 1E and 1F as proposed defendants is hereby rejected at this stage.
02. The prayer of the plaintiff No.D below Exh.192 of delay condonation and deemed abatement set-aside is allowed subject to costs of Rs.4,000/-.
03. The plaintiff No.D below Exh.194 is allowed to take legal heirs of deceased plaintiff Nos.1A, 1C, 1E and 1F as the plaintiffs in the plaint subject to costs of Rs.4,000/-.
04. The plaintiff No.D to pay the costs total Rs.8,000/- to the defendants Nos.2 to 4 today or to deposit costs in the Court on next date and give effect in the plaint at Exh.1 and comply.

Date:-02.04.2026

(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 : 02.04.2026
Judgment / Order uploaded on : 02.04.2026