

**ORDER BELOW EXH - 26**

1] This is an application filed by appellant No. 1C seeking condonation of delay in moving an application for bringing the legal representatives of deceased appellant No. 1A on record.

2] No say filed by the other side in spite of ample opportunities.

3] Application for substitution of legal heirs must be filed within 90 days from the date of death of the party. If not filed, the proceeding stands abated by operation of law. After abatement, an application under Order XXII Rule 9 CPC to set aside abatement must be filed within 60 days. If even the application for setting aside abatement is delayed beyond 60 days, the party must file a separate application under Section 5 of the Limitation Act explaining “sufficient cause” for the delay, in preferring application for setting aside abatement. In the present case, the appellants have filed an application seeking condonation of delay in preferring the application for bringing the legal heirs of the deceased appellant on record. They have also prayed for setting aside abatement through a separate application for substitution. Therefore, in the interest of justice, and to avoid undue technicalities, this Court considers the present application as one for condonation of delay in filing the application for setting aside abatement.

4] The record reveal that appellant No. 1A expired on 18/02/2022. The record further shows that appellant No. 1B, who was suffering from kidney disease and undergoing dialysis, was unable to attend court or communicate with counsel in time. He subsequently expired on 14/10/2024. Due to these circumstances, the application for substitution of legal representatives of appellant No. 1A could not be filed within the prescribed period. Appellant No. 1C, who is serving in the police force, states that he was unaware of the pending litigation and has moved the present application immediately upon receiving knowledge.

5] The Court may condone the delay if the explanation is bona fide and refusal would cause miscarriage of justice. Section 5 of the Limitation Act empowers the Court to condone delay if sufficient cause is shown.

6] In the present case, the delay is explained by:

- The illness and subsequent death of appellant No. 1B, who was responsible for communicating with counsel.
- The lack of knowledge of appellant No. 1C regarding the pending litigation.
- The fact that the application has been filed promptly upon appellant No. 1C acquiring knowledge of the proceedings.

7] The explanation offered is bona fide and supported by

circumstances beyond the control of the appellants. Courts have consistently held that matters should be decided on merits rather than being defeated on technical grounds. The cause shown constitutes “sufficient cause” within the meaning of Section 5 of the Limitation Act.

8] The delay in filing the application for setting aside abetment is thus satisfactorily explained. Refusal to condone the delay would result in denial of substantive justice.

**ORDER**

1. The application for **condonation of delay** is **allowed**.
2. The delay in filing the application for setting aside abetment is hereby condoned.

Date: 20<sup>th</sup> June 2026

(Vishal A. Sathe)  
District Judge-4, Wardha.

**C E R T I F I C A T E**

I hereby affirm that the contents of this PDF file are a true and verbatim reproduction of the original order.

(S.R.Bire)  
Stenographer (Gr.-1)