

**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE
ANKLESHWAR : DIST. BHARUCH**

Special Civil Suit No.04 of 2018

Plaintiff : Ms. Vaishali Vikrant Sakhalkar

Versus

Defendants : Ms. Yasmin Sadruddin Vastani & Ors.

Order Below Application Exh.25

1. Present application has been filed by the plaintiff to bring the legal representatives of deceased defendant Nos. 2 and 4 on record on the ground that, upon issuance of summons in the present suit the plaintiff came to know about the death of defendant Nos. 2 and 4 and therefore plaintiff may be permitted to bring the legal representatives of the said deceased defendants on record.

2. Upon filing of present application show-cause notice was directed to be issued to the proposed

parties. The notice to proposed party i.e heir of deceased defendant No. 4 was served and her legal representative appeared and filed reply vide Exh. 28, whereas notice could not be served to the legal representatives of deceased defendant No. 2 in normal course and therefore plaintiff sought permission serve by publication in local daily, which was granted and accordingly the same was served. Despite the service as aforesaid the legal representatives of deceased defendant No. 2 has neither appeared nor filed any reply.

3. Heard, Ld. advocates of the parties and perused the record. The legal representative of deceased defendant No. 4 has strongly objected upon the present application, wherein amongst other objections he has mainly stated that, the defendant Nos. 2 and 4 died long before filing of present suit and despite knowing the said fact plaintiff has intentionally and with a view to mislead this court filed present suit. That the defendant Nos. 2 and 4 died on 16/12/2013 and 18/07/2009 respectively and plaintiff has not filed any application for condoning the delay. Therefore present application being against the provisions of law, is not maintainable. Ld. Advocate for the plaintiff has not made any submissions other than the contentions of the present suit.

4. Upon considering rival contentions and submissions especially the death certificates produced

at mark 19/1 and 19/2, it is apparent that defendant Nos. 2 and 4 died on 16/12/2013 and 18/07/2009 respectively whereas the suit has been filed on 22/01/2018. It is further apparent that the said fact was brought on record by the defendant Nos. 1 and 3 vide pursis Exh. 19 filed on 04/04/2019. Despite thereof the plaintiff has chosen not to file any application seeking condonation of delay in filing of present application. Considering the date of death, present application is grossly belated and no explanation whatsoever has been furnished to explain the delay in filing present application. Even considering the date of filing pursis Exh. 19 as the date on which plaintiff became aware of the fact of death of defendant Nos. 2 and 4, period of 92 days has passed from the date of the said pursis in filing the present application on 25/07/2019. Therefore too considering the Provisions of Article 120 of The Limitation Act, 1963, plaintiff was required to seek condonation of delay in filing the present application and have the abatement set aside. However despite more than sufficient opportunity having been granted, plaintiff has chosen not to file any such application prior to or after filing of present application. Therefore plaintiff has clearly and intentionally failed to seek relief available under the law. Hence plaintiff is not entitled to relief as prayed for in present application. Therefore in the interest of justice following order is passed;

O R D E R

Present application is dismissed.

The suit stands abated qua defendant Nos. 2
and 4

The costs of present application shall follow
cause.

Pronounced in open Court on this 7th day of
July, in the year 2021.

Sd/-

Date : 07/07/2021
Place: Ankleshwar

(Anilkumar Manikchand Varma)
Principal Sr. Civil Judge,
& ACJM., Ankleshwar.
Judge Code : GJ00577

A.I. Sri.