

Order below Ex. 1

1. Perused the record of the case on hand. On dt.15.11.2021, the Ld. advocate for the defendant declared vide ex.102 that the defendant no.1/6 had died on dt.24/04/2021. The Ld. advocate for the plaintiff asked for the adjournment on dt.23/11/2021 to file an application to join his heirs in this case. But he did not file any such application to join the heirs of the deceased till dt.21/06/2022. On the same day, he filed an application vide ex.108 to grant the delay condon of 126 days, which was decided on merit and the same was granted by the Court on dt.22.09.2022. The Ld. advocate for the plaintiff filed an application to join the heirs of the deceased vide ex.110 and the same was granted by the Court on the same day, as the Ld. advocate for the proposed parties did not contend the same application. The Hon'ble Court ordered the plaintiff to file amended plaint within the stipulated time. But, thereafter neither the plaintiff nor Ld. advocate for the plaintiff filed an amended plaint before the Court till the date. The Court has given ample opportunities to the plaintiff to file the amended plaint, but neither the plaintiff nor

his Ld. advocate has taken any step to file amended plaint on record and even they did not care to appear before the Court since last few dates.

2. Even by virtue of the provisions of the Limitation Act, the amended plaint is supposed to have been filed within the stipulated time, whereas here undisputedly the said period of limitation is not maintained. At this stage, the Court is having an able assistance of this issue to be dealt by decision of **Hon'ble Supreme Court in case of Union of India v. Pramod Gupta, (2005) 12 SCC 1, Justice Pratibha M. Singh noted that if the amended plaint is not filed within the stipulated time, it cannot be amended thereafter."**

3. Even in **Azad Khan v. Riyajuddin [Second Appeal No. 288 of 2017, decided on 21st March, 2017], the Hon'ble Allahabad High Court upheld dismissal of a suit, when the plaintiff had not filed the amended plaint despite repeated opportunities and had subsequently not appeared before the Court. The Court held as under:**

"15. Admittedly, the plaintiff was not attending the Court and he did not comply the order dated 16.1.2015 to amend the memo of the

parties. If the plaintiffs do not want to pursue his suit, they cannot be compelled to contest the case.

4. Furthermore, the Ld. advocate for the defendants filed the counter claim vide ex.14 against the plaintiff. Thus, his counter claim vide ex.14 cannot be affected by virtue of any misdeed of the plaintiff.
5. Hence, due to uninterestingness of the heirs of the deceased plaintiff to proceed further this case, following order has been passed in the interest of justice :

ORDER

1. The suit of the plaintiff is hereby dismissed for want of amended plaint.
2. Counter claim of the defendants vide ex.14 is ordered to proceed further against the plaintiff as per the law without any restriction.
3. No order of cost is made.

Pronounced in open Court on April 03, 2024.

Place: Vadnagar.
Date: 03/04/2024

(Alpa Prabhudas Kadiwar)
Principal Civil Judge,
Vadnagar.
(Judge Code: GJ-01554)