

04-11-2025:

ORDERS ON I.A.NOS.II TO IV

The appellant No.2 has filed the present IA No.2 under Order XXII Rule 2 to 4 of C.P.C., seeking permission to bring the legal heirs of deceased appellant No.1 and deceased respondent No.1 on record.

He has also filed IA No.3 under Order XXII Rule 9 of C.P.C., praying to set aside the abatement, if any, caused an account of the death of appellant No.1 and respondent No.1, and IA No.4 filed under Section 5 of the Limitation Act praying to condone the delay in filing the above said applications.

In the affidavits filed in support of the applications, the appellant No.2 stated that appellant No.1, who was his brother, died on 15-01-2022, and there father-respondent No.1 died on 28-01-2021. The proposed LRs 1(a) to 1(c), as mentioned in the accompanying application are the wife and children of the deceased appellant No.1. The appellant No.2 and proposed LRs are

also the legal heirs of deceased respondent No.1. It is further stated that the delay in filing these application was due to lack of knowledge about the legal requirement to bring LRs on record. He was advise by his counsel about the necessity of the doing so only recently. It is contended that there was no intentional or deliberate delay and that if the applications are allowed, no prejudice will be caused to the respondent, whereas dismissed would cause irreparable loss to the appellants. Hence prayed for allowing the applications.

The learned counsel for the respondent No.3 has filed detailed objections to IA No.2 to 4, contending that the applications are not maintainable either in law or on facts. It is urged that the appellant No.2 has sought two reliefs in a single application contrary to procedure, that the affidavits are self serving and false, and that there is no proper explanation for the delay. It is further contended that the applications for bringing on record, the minor LR No.1(c) is defective as no separate application for appointment of guardian has been filed. Hence,

the learned counsel for the respondent No.3 prays for dismissal of all the applications.

Heard the learned counsels for both sides.
Perused records.

It is not in dispute that the appellant No.1 died on 15-01-2022 and respondent No.1 died on 28-12-2021. The relationship of the proposed Lrs, as wife and children of deceased appellant No.1, and as LR's of deceased respondent No.1, is also not seriously disputed. The only objections raised by the respondent No.3 pertain to procedural defects and the delay in filing the applications.

As per the settled law, procedural provisions under Order 22 of CPC are meant to advance the cause of justice and not to defeat it. When the death of a party is brought on record and the applicants have satisfactorily explained the reasons for the delay, liberal approach is warranted while condoning the delay and setting aside the abatement, particularly when no mala fide or deliberate negligence is made out. The explanation offered that the appellants were

unaware of the legal necessity and that they acted upon legal advice subsequently appears bona-fide and reasonable.

The objection raised by the respondent No.3 as maintainability and minor's representation can be addressed by directing the appellants to file a proper memo or application for appointment of guardian for the minor LR, if necessary, during the course of further proceedings. Such technical defects cannot be a ground to rejected the application all together. Hence this court finds sufficient cause to condone the delay and to set aside the abatement, if any, and to permitted the appellant No.2 to bring the Lrs of deceased appellant No.1 and respondent No.1 on record as prayed. Therefore, this Court deems it fit to pass the following:

ORDER

IA No.4 is filed under Section 5 of Limitation Act is allowed on cost of Rs.700/-.

The delay in filing the application to bring the LRs on record is condoned.

IA No.3 filed under Order 22 Rule 9 of CPC is allowed.

Any abatement that might have occurred on account of the death of appellant No.1 and respondent No.1 is hereby set aside.

IA No.2 is filed under Order 22 Rule 2 to 4 of CPC is allowed.

The proposed legal representatives mentioned in the applications are hereby brought on record. As LRs of deceased appellant No.1 and respondent No.1, respectively as prayed.

The appellant shall file, if necessary a proper application

regarding representation of minor LR
within 2 weeks.

Call on for amendment and
amended appeal memo by 20-11-
2025.

Senior Civil Judge,
Bailhongal