

OS 18/2023

ORDERS ON I.A.No.I to III

1. The plaintiff has filed IA No.1 U/o XXII Rule 4 of CPC to bring LR's of D-1 and D-3 on record and IA No.II U/o XXII Rule 9 of CPC to set aside abatement as against defendant No.1 and 2 and IA No.III U/Sec.5 of Limitation Act for condoning the delay in filing the application to bring the LR's of defendant No.1 and 3 on record.

2. The said applications are accompanied with affidavits of the plaintiff, wherein it is stated that the plaintiff bank has filed the above suit for recovery of amount from the defendants. But after filing the suit, the defendant No.1 and 3 have died leaving behind their legal heirs. The death of the defendant No.1 and 3 was reported as per shara made by the bailiff. Hence, the delay in filing the applications. If the applications are not allowed, the plaintiff will be put to hardship, loss and inconvenience. On the other hand, no prejudice will be caused to the defendant's side. Hence, prays to allow the applications.

3. After filing of the application notice was issued to proposed LR's of defendant No.1 to 3. who have filed objections to IA no.1 to 3 stating that the applications are not maintainable the reasons assigned are not proper and there are no documents to show that they are the legal heirs of defendant No.1 and 3. Hence, prays to dismiss the

applications.

4. Heard the arguments.

5. The plaintiffs has filed this petition for recovery of money from the defendants. In the meanwhile, the defendant No.1 to 3 were reported dead. Therefore, as per Article 120 of the Limitation Act, the suit has abated after 90 days, from the date of death of the petitioner. According to Article 121 of the Limitation Act, an application for setting aside the abatement can be filed within 60 days from the date of abatement. However, in this case the application was filed only on 03.07.2024. There is delay of more than 16 months. In order to condone the same, the plaintiff has filed the I.A.No.III. This being a suit for money, the liability of the defendant survives on the legal representatives and it is necessary for complete adjudication of all the matters connected with the suit to implead legal representatives of defendant.

6. The proposed LR's of defendant No.1 and 3 though have filed objections. They do not deny the they are the legal heirs of defendant No.1 and 3. it is the contention that they are not bound to pay the loan taken by defendant No.1 and 3.

7. It is a basic principle that substantive rights of parties should not be ignored, because of delay, but a distinction must be made between delay of a few days and inordinate delay causing prejudice to the other party. Here

there has been an inordinate delay. Therefore, by adopting a practical approach, it is necessary that delay be condoned. Accordingly, I proceed to pass the following:

ORDER

The IA.No.III filed by the plaintiff u/s.5 of Limitation Act is hereby allowed.

The delay in filing the application u/o. XXII rule 4 of CPC is hereby condoned and application is admitted.

The I.A.No.I filed by the plaintiff U/o XXII rule 4 R/w Sec. 151 CPC is hereby allowed.

The plaintiff is hereby permitted to bring the LR's of defendant No.1 and 3 on record as legal heirs of deceased defendant No.1 and 3 and proceed with the case.

To carryout the necessary amendment and for amended petition by: 04-06-2025.

**Addl. Civil Judge & JMFC.,
Challakere.**