

**IN THE COURT OF SENIOR CIVIL JUDGE
CHANNARAYAPATNA**

**PRESENT: GANAPATI GURUSIDDA BADAMI
B.A.L.L.B.(SPL)
SENIOR CIVIL JUDGE & J.M.F.C.,
CHANNARAYAPATNA**

DATED ON THIS 25th DAY OF JANUARY 2019

O.S.No.12/2012

Plaintiffs : Smt.Yashodamma W/o Tailor Krishnashetty
and others

V/s

Defendants : Smt.Kempamma W/o Venkataramanaiah and others

**COMMON ORDER ON I.A.NO.18 UNDER ORDER 22 RULE 4 OF CPC.,
I.A.NO.19 UNDER ORDER 22 RULE 9 OF CPC.,
I.A.NO.20 UNDER SEC.5 OF LIMITATION ACT AND
I.A.NO.21 UNDER ORDER 32 RULE 3 OF CPC.,**

Plaintiff has filed these applications seeking permission to bring the legal heirs of deceased defendant No.4 on record who died on 09.07.2016 and to set aside the abatement if any and to condone the delay in bringing the legal heirs of deceased defendant No.4 and also sought for the appointment of defendant No.4(a) as minor guardian of minor defendant No.4(d).

2) In the accompanying affidavit of plaintiff, she has stated that, the defendant No.4 died on 09.07.2016 and she has already filed an application to bring the legal heirs of deceased Ramesh and while filing the application, one of the daughter has not been made as party and while searching the address of defendant No.4(c), she came to know that, the Ramesh has also got one daughter who has not been made as party and immediately, she brought this fact to the knowledge of her counsel and the said legal heir is also the necessary party to this suit. She has stated that, if her application is not allowed and she is not permitted to bring the legal heir of deceased defendant No.1, she will be put to heavy and irreparable loss and it will lead to multiplicity of the proceedings. She has stated that, if her application for setting aside abatement is not allowed, she will be put to loss and hardship which cannot be compensated in terms of money and if her application to condone the delay is not considered, she will be put to loss and hardship. She has stated that, the defendant No.4(d) is minor and the defendant No.4(a) is her mother who has no adverse interest against the minor and prayed to appoint defendant No.4(a) as minor guardian of minor defendant No.4(d).

3) The defendants No.3 and 4 have filed objections to the applications contending that, the applications are time barred and not maintainable under law and liable to be dismissed due to technical defects. If applications are

allowed, defendants will be put to loss and hardship and on the contrary, no kind of loss or hardship will be caused to the plaintiff and no proper reasons are assigned for delay in filing the applications. Therefore, it is prayed to dismiss the applications with costs.

4) Heard the arguments of learned counsel for plaintiff and learned counsel for defendant No.3 and 4 on the applications and perused the materials on record.

5) Materials on record disclose that, defendant No.4 died on 09.07.2016 leaving behind his legal heirs and earlier plaintiff had filed application to bring the legal heirs of deceased Ramesh and the said applications were allowed and his legal heirs by name Anitha W/o late Ramesh, Rakesh S/o late Ramesh and Sushmitha D/o late Ramesh have been brought on record and the amendment has been carried out and amended plaint has been furnished and legal heirs are brought on record. Now the plaintiff has filed these applications to bring another daughter of late Ramesh as legal heir of defendant No.4 on the ground that, she came to know about another daughter of late Ramesh and she informed this fact to her counsel who told that, she is also necessary party to the suit and she came to know about another daughter of defendant No.4 while searching the address of defendant No.4(c). There is no dispute that, the defendant No.4

died and some of his legal heirs are brought on record and it is not seriously disputed by the defendant No.3 and 4 that, Archana is also one of the daughters of deceased defendant No.4. No doubt there is some delay in bringing the legal heir on record and some of the legal heirs are already brought on record. But, court should be liberal while considering the applications for bringing the legal heirs on record and for setting aside the abatement and condonation of delay and court should not adopt straight jacket formula while considering the applications for condonation of delay in bringing the legal heirs on record and for setting aside abatement and the sufficient cause has been explained by the Hon'ble Supreme Court in various decisions and acceptance of reasons assigned is the rule and rejection is an exception. In a decision reported in **Ramasumiran v/s DDC AIR 1985 SC page No.606** it is held as under:

Considering the rural background and illiteracy and ignorance of the appellants, delay of 6 years in filing application for bringing legal representatives of the deceased respondent was condoned and abatement order was set aside. When the counsel for the respondent intimated about the death of the respondent about five years after the death, it is a sufficient cause.

6) In one more decision reported in **Radhadevi v/s Rameshkumar AIR 1988 All 262** where in it is held as under:

The fact that the applicants are illiterate purdanashin ladies and were ignorant of the fact that an application for substitution has to be made within certain stipulated time is sufficient to condone the delay and also set aside the abatement.

7) In a decision reported in Rama Nath Sao @ Rama Nath Sahu and others v/s Gobardhan Sao and others where in it is held as under:

The expression ‘sufficient cause’ within the meaning of S.5 of the Act or O.22, R.9 of the code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to party. In a particular case whether explanation furnished would constitute ‘sufficient cause’ or not will be dependant upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the court should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bona fide can be imputed to the defaulting party. On the other hand, while considering the matter the courts should

not lose sight of the fact by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner. However by taking a pedantic and hyper-technical view of the matter the explanation furnished should not guidable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effects of the order it is going to pass upon the parties either way.

8) In a decision reported in Perumon Bhagvathy Devaswom Perinadu village v/s Bhargavi Amma by LRs & ors. 2008 AIR SCW 6025: 2008 (8) SCC 321: 2008(11) SCALE 96 Where in it is held as under:

Held, The principles applicable in considering applications for setting aside abatement are (1) The words “sufficient cause” in Section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant; (2) In considering reasons for condonation of delay, courts are

liberal with reference to applications for setting aside abatement, than other cases. Courts tend to set aside abatement and decide matter on merits, rather than terminate appeal on ground of abatement; (3) Decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation; (4) Extent or degree of leniency to be shown by a Court depends on nature of application and facts and circumstances of the case. For example, Courts view delays in making applications in a pending appeal more leniently than delays in institution of an appeal. Courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses; (5) Want of 'diligence' or 'inaction' can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect appellant to be diligent. Where an appeal is admitted by High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit Court or his lawyer every few weeks to ascertain position nor keep checking whether contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal. Some of the special factors which have a bearing on what constitutes sufficient cause, are whether the

appeal is pending in a Court where regular and periodical dates of hearing are fixed. There is a significant difference between an appeal pending in a subordinate Court and an appeal pending in a High Court. In lower Courts, dates of hearing are periodically fixed and a party or his counsel is expected to appear on those dates and keep track of the case. In contrast, when an appeal is pending in High Court, dates of hearing are not fixed periodically. The second circumstance is whether the counsel for deceased respondent or legal representative of deceased respondent notified the Court about the death and whether the Court gave notice of such death to the appellant. The third circumstance is whether there is any material to contradict the claim of the appellant, if he categorically states that he was unaware of the death of the respondent. In the absence of any material, the Court would accept his claim that he was not aware of the death.

9) Hon'ble Supreme Court and various Hon'ble High Courts have laid down the propositions of law that, while considering the applications for condonation of delay and setting aside abatement, courts should be liberal and there shall not be straight jacket formula. The grounds made out in the applications for delay in bringing the legal heir on record is sufficient and I feel

it just and proper to condone the delay and to set aside the abatement by allowing the applications. The defendant No.4(d) is the minor and defendant No.4(a) is her natural mother and guardian and she is the best and competent person to safeguard the interest of minor defendant No.4(d). So, I feel it just and proper to appoint the defendant No.4(a) as minor guardian as defendant No.4(d) to protect the interest of the minor defendant No.4(d). If applications are allowed and another legal heir of deceased Ramesh is also brought on record, no kind of loss or hardship will be caused to the other side and the proposed legal heir is also the necessary party to the adjudication of the claim and in her absence, the suit cannot be decided effectively and completely. So, it is just and proper to allow the applications. So, I proceed to pass the following:-

ORDER

***I.A.No.18 under Order 22 Rule 4 of CPC,
is hereby allowed***

***Plaintiff is permitted to bring legal heirs
of deceased defendant No.4 Ramesh on record.***

***I.A.No.19 under Order 22 Rule 9 of CPC,
is hereby allowed and abatement if any is set
aside for not bringing the legal heirs on record
within time.***

***I.A.No.20 under Sec.5 of Limitation Act is
hereby allowed and the delay caused in
bringing the legal heirs on record is condoned.***

*I.A.No.21 under Order 32 Rule 3 of CPC,
is hereby allowed.*

*The defendant No.4(a) is appointed as
minor guardian of minor defendant No.4(d).*

*Plaintiff shall carryout amendment and
furnish amended plaint within 14 days form
the date of order.*

(Ganapati. Gurusidda Badami)
Senior Civil Judge & J.M.F.C.,
Channarayapatna.