

**COMMON ORDERS ON IA Nos.4 to 6**

**IA No.4** is filed U/o **XXII Rule 4** of CPC., by learned counsel for the plaintiffs seeking to bring the legal representatives of deceased defendant No.5 on record.

2. It is stated in an affidavit that, the defendant No.4 was died, during the pendency of the case and his legal representatives shown in IA No.4 are necessary parties to the suit. Thus, it is necessary to bring them on record. Accordingly, they have prayed to allow IA No.4.

3. **IA No.5** is filed by learned counsel for the plaintiffs U/o **XXII Rule 9** of CPC., is seeking to set aside the abatement against the deceased defendant No.5.

4. In the affidavit, it is stated that, the deceased defendant died. The order of abatement was passed against him before making application to bring his legal representatives on record. If, the IA No.5 is not allowed, the great hardship will be caused to the plaintiff.

5. **IA No.6** is filed U/Sec.5 of Limitation Act., seeking to condone the delay in bringing the legal representatives on record.

6. As per affidavit, the defendant No.5 died, during the pendency of the suit and delayed due to ascertaining LR's of defendant No.5. The delay is not intentional.

7. Notice to the legal representatives of deceased defendant No.5 i.e., proposed defendant No.5(a) to (c) is duly served and are appeared through their counsel and have not filed any objections.

8. Heard on learned counsel for plaintiffs and perused the materials.

9. The point for my consideration is that:-

***“Whether the applicant has made out grounds to allow above applications?, if so, what order?”***

10. The instant suit is for the relief of Specific performance of contract. As found from above applications, the defendant No.5 died, during the pendency of the suit on 15.01.2025.

11. As per Article 120 of the Limitation Act 1963, the legal representatives of a deceased defendant should be brought on record within a period of 90 days from the date of death of the defendant. After expiry of that period, the suit shall abate so far as the deceased defendant is concerned if no application is made under Rule 4 of Order 22 within that period of 90 days.

12. In this case, admittedly the defendant No.5 died during the pendency of the suit. This IAs' are filed on 15.01.2025. Thus, the plaintiff has not taken steps to bring the legal representatives of the deceased defendant No.5 on record in time. Thus, the suit is abated against the deceased defendant.

13. As per Rule 9 of Order 22, the plaintiff or legal representatives of deceased plaintiff may apply for an order to set aside the abatement. The court can set aside the order of abatement upon such terms as to costs if it is proved that they were prevented by any sufficient costs from continuing the suit. The provisions of Sec.5 of the Limitation Act shall apply to the applications filed under Rule 22 (2).

14. Sec.5 of the Limitation Act gives power to the Court to admit any application other than application under any of the provisions of Order XXI of CPC even

after the prescribed period, if the applicant satisfies the Court that he had sufficient cause for not making the application within such period.

15. Since, the suit is for the relief of specific performance against the defendants, it is necessary to adjudicate the rights of the parties having concern over the suit property. Though, the applicant has not completely mentioned the grounds for failure in filing the applications within a period of limitation, it is very much necessary to bring legal representatives of deceased defendant No.5 on record for proper adjudication of the case & to avoid the multiplicity of the proceedings and also in the ends of justice and equity by imposing costs.

16. The list of the legal representatives of deceased defendant No.5 shown in IA No.4 is not disputed at this stage by other side. Further, there are no objections even from other side to the above applications and the legal representatives of the defendant No.5 have not contested the matter. Hence, the Court is of the opinion that, if the delay is condoned in filing an applications seeking to set aside the abatement against the deceased defendant No.5 in enabling the applicant to bring the LRs' of deceased defendant No.5 on record, no hardship will be caused to other parties. In this regard, the Court has relied upon the ruling of Hon'ble Apex Court reported in **1995 Supp.(2) SCC 529**. Hence, the applicant has clearly made out sufficient grounds to allow above IAs. Accordingly, above point is answered in the '**Affirmative**' with the following;

#### **ORDER**

**IA No.4** filed U/o XXII Rule 4 r/w Sec.151 of CPC., **IA No.5** filed U/o XXII Rule 9 Sec.151 of C.P.C. & **IA No.6** filed U/Sec.5 of Limitation Act., by learned counsel for the plaintiffs are hereby **allowed**.

The delay in filing an applications for an order to set aside the abatement of suit against deceased defendant No.5 is hereby **condoned**. The order of abatement against defendant No.4 is hereby set aside. The legal representatives of deceased defendant No.5 are hereby brought on record in the place of deceased defendant No.5 as per IA No.4.

Learned counsel for the plaintiff is hereby directed to carry out amendment in the plaint and also directed to file amended plaint.

Call on: **30.07.2026**

**Prl. Civil Judge & JMFC.,  
Mulbagal.**