

ORDERS ON I.A.

L/c for the petitioner filed these applications U/o 22 Rule 4 and 9 R/w sec. 151 of CPC along with I.A. U/s 5 of limitation Act seeking to set aside the abatement order against the deceased petitioner and permit the LRs of petitioners to come on record in the interest of justice.

2. In the affidavit annex to the applications the petitioner No. 1(a) submitted that she has filed the affidavit on behalf of herself and on behalf of petitioner No. 1(b) to 1(d) and submitted that the deceased petitioner by name Gangadaraiah was her husband. During the pendency of the trail Gangadaraiah died leaving behind the proposed petitioner No. 1(a) to 1(d) as legal heirs of the deceased. The Petitioner No. 1(a) to 1(d) are the wife and children of the deceased petitioner, as such they are proper and necessary parties to proceed with the case. The delay is not intentional one. Hence prays to allow the applications by condoning delay.

3. On the other hand respondent No. 2 filed objections on I.A's separately and contended that the petitioner Gangadaraiah died on 08.07.2022, as such his legal heirs have no right to come on record. The petitioner Gangadaraiah died in the age of 70 years due to his age factor. As such application is barred by limitation. Hence, prays to dismiss the applications.

4. Heard both side. Perused the record. Admittedly the petitioner Gangadaraiah filed this petition seeking compensation to the injuries sustained by him in the road traffic accident. During the pendency of the petition the Gangadaraiah reported to be dead. The Petitioner No. 1(a) to 1(d) contended that they are the wife and children of the deceased petitioner. On the other hand it is undisputed that the proposed petitioner No. 1(a) to 1(d) are the wife and children and legal heirs of the deceased petitioner. Whether the proposed petitioner No. 1(a) to 1(d) having right to maintain the petition filed by their deceased father is a matter of trial.

5. As for as delay of filing of application to bring LRs of deceased is concerned, admittedly the petition will be abated immediately after the death of the petitioner. His LR's should be brought on record within 90 days from the date of his death. In the case on hand the petitioner reported to be dead on 08.07.2022 and the application came to be filed on 07.12.2023. These applications has been filed after 518 days of the death of the deceased petitioner. In the affidavit the petitioner No. 1(a) submitted that she was under shock for the death of her husband and she is not able to file these applications on time. Thus the reasons for delay is sufficient and acceptable. As such no prejudice will cause to the respondent No. 2 if the delay of 518 days is to be condoned in the interest of justice. Thus for all these reasons applications are liable to be allowed. Consequently LRs of deceased petitioner i.e., petitioner No. 1(a) to 1(d) are permitted to brought on record.

M.V.C. No. 292/2022

To carried out amendment
and to furnish amended
petition call on 15.06.2024.

Sd/-
Judge,
Court of Addl. S.C., &
Mysuru