

ORDERS ON IA No.XV

The applicant has filed IA No.XV under Order XXII rule 4 R/w.Order XXII Rule 9 of CPC R/w.Sec.5 of Limitation Act and prays to set aside the abatement order against the deceased defendant No.11, to condone the delay if any in filing the L.Rs. Application and prayed to permit the L.Rs. of deceased defendant No.11 to come on record

Heard on both sides.

Perused the application and also supportive affidavit and also other materials available on record. The petitioner has filed IA. No.XV under Order XXII rule 4 R/w.Order XXII Rule 9 of CPC R/w.Sec.5 of Limitation Act. In this regard the petitioner also furnished Circular of Hon'ble High Court of Karnataka dated 12.08.2021 Wherein the Hon'ble High court of Karnataka issued directions to the Judicial officers stating that, " when there is a delay in filing an application for bringing on record the legal representatives of deceased party, there can be a combined application made containing the prayer for condonation of delay, setting aside the abatement and for bringing on record the legal representatives of the deceased part, the registry will not raise any objection for filing a combined application. If the

Hon'ble court issues a direction under Rule 23 of the said rules of 1967, the applicant will be bound to make separate applications as per the directions of the court". As per the above circular filing of combined application is maintainable.

Further, this court satisfied on the grounds urged in the I.A.No.XV and it is necessary to bring the legal representatives of the deceased defendant No.11 on record to adjudicate the matter effective. Moreover, the right to sue survives in favour of the legal representatives of deceased defendant No.11. In the present case, the cause of action also survives for legal representatives of deceased defendant No.11. Therefore, I am of the view that the application filed by the plaintiff is hereby and made out sufficient grounds to allow the application. Hence, I proceed to pass the following:

ORDER

The IA No.XV filed by the plaintiff is hereby allowed.

Abatement order against the defendant No.11 is hereby set aside. The L.Rs. of deceased defendant No.11 is permitted to come on record.

The applicant is hereby by directed to carry out the necessary amendment in the original plaint and to furnish amended plaint.

For compliance by

I ACJ., & JMFC., Nanjangud