

COMMON ORDERS ON I.A.NO.I TO III.

These I.A.No.I to III filed by the applicant/DHr under Order XXII, Rule 4 R/w Section 151 of C.P.C., under Order XXII, Rule 9 R/w Section 151 of C.P.C. and under Section 5 of Limitation Act, seeking to bring the legal representative of deceased JDr on record by set aside the order of abatement against deceased JDr and also condone the delay in bringing legal representative of deceased JDr on record.

2. In these I.A.No.I to III, it is stated that, the JDr was died on 23.07.2023 leaving behind the legal representatives as stated in the I.A.No.I. The Lrs mentioned in the applications are the parents of the deceased JDr. Hence, bringing of them to the petition is necessary for proper adjudication of the case and otherwise the great hardship will be caused to them. Therefore, the order of abatement needs to be set aside in the interest of the applicant. Further stated that, the legal heirs of the JDr are also necessary parties to the above petition. Accordingly, the applicant has prayed to allow the I.A.No.I to III.

3. On the other hand, notice duly served on Lrs of Jdr, but they have not appeared before the court to contest the application.

4. Heard and perused the materials available on record.

5. Now the only point that will arise for my consideration are:-

1. Whether the applicant has made out sufficient grounds to allow I.A.No.I to III?

2. What Order?

6. My answers to the above points are:-

Point No.1 : In the **Affirmative**.

Point No.2 : As per order
for the following,

:: R E A S O N S ::

7. **Point No.1:-** The instant petition is for the relief of recovery of money. As found from above applications the JDr was died during the pendency of the petition.

8. As per Article 120 of the Limitation Act 1963, the legal representatives of the deceased JDr should be brought on record within a period of 90 days from the date of death of the JDr. After expiry of that period, the petition shall abate so far as the deceased JDr is concerned if no application is made under Rule 3 of Order 22 within that period of 90 days.

9. In this case, admittedly the JDr was died on 23.07.2023. The period of 90 days would expire as on 23.10.2023. The instant applications are filed on 12.09.2024. Thus, the petition was abated against the deceased JDr.

10. As per Rule 9 of Order 22, the DHr or legal representatives of deceased JDr 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 petition. The provisions of Section 5 of the Limitation Act shall apply to the applications filed under Rule 22(2).

11. Section 5 of the Limitation Act gives power to the Court to admit any application other than application under any of the provisions of Order 21 of C.P.C. even after the prescribed period if the applicant satisfies the Court that he had sufficient cause for not making the application within such period.

12. Since the petition is for recovery of decreed amount, it is necessary to adjudicate the rights of each and every party. Though the applicant has not completely mentioned the grounds for their failure in filing the applications within a period of limitation, it is very much necessary to bring legal representatives of deceased JDr on record for proper adjudication of the case and to avoid the multiplicity of the proceedings and also in the ends of justice and equity by imposing costs.

13. The list of the legal representatives of JDr shown in the above applications are not disputed at this stage by other side. Hence, the Court is of opinion that, if the delay is condoned in filing an applications seeking to set aside the abatement against the deceased JDr in enabling the applicant to bring the Lrs., of deceased JDr on record, no hardship will be caused to other parties. Hence, the applicant has clearly made out sufficient grounds to allow above I.As. Accordingly, Point No.1 is answered in the '**Affirmative**'.

14. **Point No.2:-** In the light of the above discussion, I proceed to pass the following:-

:: O R D E R ::

I.A.No.I filed under Order XXII,
Rule 4 R/w Section 151 of C.P.C.,
I.A.No.II filed under Order XXII, Rule

9 R/w Section 151 of C.P.C. and I.A.No.III filed under Section 5 of Limitation Act, by the applicant/DHr are hereby **allowed.**

Further, whatever the delay in filing of these I.As., is hereby condoned.

The Lrs., of deceased JDr are hereby brought on record as JDr No.1(a) & 1(b) as mentioned in I.A.No.I.

The DHr is hereby directed to carry out the amendment in the petition and also directed to file the amended petition.

For amendment and to file amended petition.

Call on: 10.01.2025.

**Addl. Civil Judge & J.M.F.C.,
T.Narasipura. ****