

**COMMON ORDERS ON I.A.No.VI AND VII.**

These I.A.No.VI & VII filed by the applicants under Order XXII, Rule 3 of C.P.C and under Order XXII, Rule 9 of C.P.C., seeking to bring the legal representatives of deceased Dhr on record by set aside the order of abatement against deceased Dhr.

2. In these I.A.No.VI & VII, it is stated that, the Dhr was died leaving behind the legal representatives as stated in the I.A.No.VI. The Lrs mentioned in the applications are the wife and children of the deceased Dhr. 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 Dhr are also necessary parties to the above petition. Accordingly, the applicants have prayed to allow the I.A.No.VI & VII.

3. On the other hand, the learned counsel for the Jdr submitted that, IA's may be allowed.

4. Heard and perused the materials available on record.

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

1. Whether the applicants has made out sufficient grounds to allow I.A.No.VI & VII?
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 DHr was died during the pendency of the petition.

8. As per Article 120 of the Limitation Act 1963, the legal representatives of the deceased DHr should be brought on record within a period of 90 days from the date of death of the DHr. After expiry of that period, the petition shall abate so far as the deceased DHr 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 DHr was died on 04.05.2024. The period of 90 days would expire as on 04.08.2024. The instant applications are filed on 27.08.2024. Thus, the petition was abated against the deceased DHr.

10. As per Rule 9 of Order 22, the DHr or legal representatives of deceased DHr 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 applicants 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 applicants have 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 DHr 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 DHr 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 DHr in enabling the applicants to bring the L.Rs. of deceased DHr on record, no hardship will be caused to other parties. Hence, the applicants have 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.VI filed under Order XXII,  
Rule 3 of C.P.C and I.A.No.VII filed

under Order XXII, Rule 9 of C.P.C.,  
are hereby **allowed**.

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

The L.Rs. of the deceased DHr  
are hereby brought on record as Dhr  
No.1(a) to 1(c) as mentioned in  
I.A.No.VI.

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:19.12.2024.

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