

ORDERS ON I.A.NO.V TO VIII

These I.A.No.V to VIII filed by the applicant/plaintiff under Order XXII, Rule 4 of C.P.C., under Order XXII, Rule 9 of C.P.C., under Section 5 of Limitation Act and under Order XXXII, Rule 3 R/w Section 151 of C.P.C., seeking to bring the legal representatives of deceased defendant No.1 on record by set aside the order of abatement against deceased defendant No.1 and also condone the delay in bringing legal representatives of deceased defendant No.1 on record and to appoint Lrs., of the deceased defendant No.1(a) as guardian for minor Lrs., the of deceased defendant No.1(b).

2. In these I.A.No.V to VIII it is stated that, the plaintiff has filed the above suit against the defendants for the relief of recovery of money. The defendant No.1 died on 09.06.2023 leaving behind the legal representatives as stated in the I.A.No.V. The bringing of Lrs., of the deceased defendant No.1 to the proceedings is necessary for proper adjudication of the case and otherwise the great hardship will be caused to the plaintiff. Further stated that, there is a delay in bringing his legal heirs to the suit. Therefore, the order of abatement needs to be set aside in the interest of the

applicant/plaintiff. Further stated that, during the pendency of the above proceedings the defendant No.1 died leaving behind his wife and daughter as his legal heirs. They are also necessary parties to the above suit. The daughter is minor, who is the Lrs., of the deceased defendant No.1(b), she is in the custody of her mother, Therefore, she is proper and fit person to safeguard her right in the suit. Hence, appointment of guardian is just and necessary. If she is not willing to act as guardian any court guardian may be appoint for that matter in the above case. Accordingly, the applicant/plaintiff has prayed to allow the I.A.No.V to VIII.

3. On the other hand, notice duly served on the Lrs., of defendant No.1. But they have not appeared before this court.

4. Heard the arguments of plaintiff's side and perused the materials available on record.

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

1. Whether the applicant/plaintiff has made out sufficient grounds to allow I.A.No.V to VIII ?

2. What Order ?

6. My answers to the above points are:-

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

Point No.2 : As per final order
for the following:-

:: R E A S O N S ::

7. **Point No.1:-** The instant suit is for recovery of money. As found from above applications, the defendant No.1 was dead on 09.06.2023 i.e., during the pendency of the suit.

8. As per Article 120 of the Limitation Act 1963, the legal representatives of a deceased defendant No.1 should be brought on record within a period of 90 days from the date of death of the defendant No.1. After expiry of that period, the suit shall abate so far as the deceased defendant No.1 is concerned if no application is made under Rule 2 of Order 22 within that period of 90 days.

9. In this case, admittedly the defendant No.1 died on 09.06.2023. The period of 90 days expired on 09.09.2023. The instant applications are filed on

04.07.2024. Thus, the suit is abated against the deceased defendant No.1.

10. As per Rule 9 of Order 22, the plaintiff or legal representatives of deceased defendant No.1 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 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/plaintiff satisfies the Court that he had sufficient cause for not making the application within such period.

12. Since the suit is for recovery of money, it is necessary to adjudicate the matter. Though the applicant/plaintiff 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 defendant No.1 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. From the perusal of the Rule 1 of Order XXXII of C.P.C., it is abundantly clear that every suit by a minor shall be instituted in his name by a person who in such suit shall be called the guardian of the minor.

14. From the perusal of the affidavit of I.A.No.VIII, it is clear that, the mother, who is the Lr of the deceased defendant No.1(a) is the natural guardian of the Lr of the deceased defendant No.1(b), who is minor. Therefore, if the Lr of the deceased defendant No.1(a) is appointed as a guardian in favour of Lr of the deceased defendant No.1(b) to proceed with the case, no hardship will be caused to the other side. Therefore, I am of the opinion that, the plaintiff has made out sufficient grounds to appoint defendant No.1(a) as guardian to the defendant No.1(b). Hence, the grounds mentioned in I.A.No.VIII are believable.

15. The list of the legal representatives of defendant No.1 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 application seeking to set aside the abatement against the deceased defendant No.1 in enabling the applicant/plaintiff to bring the LRs., of deceased defendant No.1 on record, no hardship will be caused to other parties. Hence, the applicant/plaintiff has clearly made out sufficient grounds to allow above I.As. Accordingly, Point No.1 is answered in the '**Affirmative**'.

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

:: O R D E R ::

I.A.No.V filed under Order XXII, Rule 4 of C.P.C., I.A.No.VI filed under Order XXII, Rule 9 of C.P.C. I.A.No.VII filed under Section 5 of Limitation Act., and I.A.No.VIII filed Order XXXII, Rule 3 R/w Section 151 of C.P.C are hereby **allowed on cost of Rs.200/- each.**

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

condoned as prayed in the
I.A.No.VII.

The Lr of defendant No.1(a) is
hereby appointed as natural
guardian to prosecute the matter on
behalf of the Lr of defendant No.1(b).

The proposed LR., of the
deceased defendant No.1 are hereby
brought on record as defendant
No.1(a) & 1(b) respectively as
mentioned in I.A.No.V.

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

For amendment and to file
amended plaint.

Call on: 17.02.2025.

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