

ORDERS ON I.A.NO.XII to XIV

These I.A.No.XII to XIV filed by the applicants/Lrs of plaintiff under Order XXII, Rule 3 of C.P.C., under Order XXII, Rule 9 of C.P.C. and under Section 5 of Limitation Act., seeking to bring the legal representatives of deceased plaintiff on record by set aside the order of abatement against deceased plaintiff and also condone the delay in bringing legal representatives of deceased plaintiff on record.

2. In these I.A.No.XII to XIV it is stated that, the plaintiff has filed a suit against the defendant for the relief of Specific Performance of Contract. During pendency of the above suit the plaintiff was died on 14.11.2023 leaving behind the legal representatives as stated in the I.A.No.XII. Further, bringing of Lr of the deceased plaintiff 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 heir to the suit. Therefore, the order of abatement needs to be set aside in the interest of the applicant. Further stated that, during the pendency of the above proceedings the plaintiff was died leaving behind his wife and children as his legal heirs. Hence, they are also necessary parties to the above suit. Accordingly, the applicant has prayed to allow the I.A.No.XII to XIV.

3. On the other hand, learned counsel for the defendants submitted that, he has no objection to the above applications.

4. Heard on both sides and perused the materials available on record.

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

1. Whether the applicants/Lrs of plaintiff have made out sufficient grounds to allow I.A.No.XII to XIV ?

2. What Order ?

6. My answers to the above points are:-

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

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

:: R E A S O N S ::

7. **Point No.1:-** The instant suit is for Specific Performance of Contract. As found from above applications, the plaintiff was died on 14.11.2023 i.e., during the pendency of the suit.

8. As per Article 120 of the Limitation Act 1963, the legal representatives of a deceased plaintiff should be brought on record within a period of 90 days from the date of death of the plaintiff. After expiry of that period, the suit shall abate so far as the deceased plaintiff 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 plaintiff died on 14.11.2023. The period of 90 days would expire as on 14.02.2024. The instant applications are filed on 14.02.2024. Thus, the suit is abated against the deceased plaintiff.

10. As per Rule 9 of Order 22, the plaintiff or legal representatives of deceased plaintiff 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 applicants satisfies the Court that they had sufficient cause for not making the application within such period.

12. Since the suit is for Specific Performance of Contract, it is necessary to adjudicate the rights of each and every party who has interest over the suit property. 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 plaintiff 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 plaintiff 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 plaintiff in enabling the applicant to bring the L.Rs. of deceased plaintiff 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.XII filed under Order XXII,
Rule 3 of C.P.C., I.A.No.XIII filed under
Order XXII, Rule 9 of C.P.C. and

I.A.No.XIV filed under Section 5 of Limitation Act., are hereby **allowed**.

Further, whatever the delay in filing of these I.As., is hereby condoned as prayed in the I.A.No.XIV.

The proposed L.Rs. of the deceased plaintiff are hereby brought on record as plaintiff No.1(a) to 1(d) as mentioned in I.A.No.XII.

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:15.07.2024

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