

KAUK030017312018



**COMMON ORDERS ON I.A.U/O. XXII RULE 3, I.A. U/O
XXII RULE 9 AND SECTION 5 OF THE LIMITATION ACT**

1. The instant applications are filed by the Plaintiff No.2. U/O. XXII Rule 3, order XXII R.G. and under Section 5 of the Limitation Act seeking to bring the L.R.s of Plaintiff No.1 and 5 on record, to set aside the abatement of any and to condone the delay if any in filing the application.

2. In the accompanying affidavit it is stated that Plaintiff No.1 Sri. Ramesh S. Haldankar expired on 21.10.2019 and Plaintiff No.5 Sri. Ganapat N. Naik expired on 06.12.2019 by leaving behind their legal heirs. Both of them breathed their last due to Covid-19 Pandemic at Mumbai as such Plaintiff No.2 has filed the instant applications to bring their L.R.s on record. It is further stated that **L.R.s** of Plaintiff No.1 and 5 have executed G.P.A. in favour of Plaintiff No.2. Plaintiff No.2 intends to bring the following L.R.s of the deceased persons on record.

(a) **Smt. Sheela,**

W/o. Late Sri. Ramesh Haldankar,

Aged about 60 years,
R/o. Pascal Wadi Mad, Jatti Road,
Mallad(West), Mumbai.

(b) **Sri. Vinod Ganapat Naik,**

Aged about 50 years,
R/o. Malvani Church, A/7
Kamal Sharma Chalwal Austin Compound,
Marve Road, Kharodi Malad (West)
Mumbai.

3. No objections were raised by the respective counsels for defendants objecting the same.

4. Heard. Perused the materials available on record.

5. Order XXII Rule 3 of C.P.C. speaks about the "**Procedure in case of death of one of several plaintiffs or of sole plaintiff**"

(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to the sue survives, the Court, on an application made in that behalf, shall cause the legal representative, of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

6. Generally when the plaintiff expires his legal representatives would move an application seeking the permission of the Court to allow them to come on record in the place of the deceased. In the instant case, L.R.s of deceased Plaintiff No.1 and 5 have executed G.P.A. in favour of Plaintiff No.2 as such he has filed an application on their behalf to bring them on record. Counsel for Plaintiffs also filed the Vakalath for the proposed plaintiffs, death certificates of the deceased persons and copy of the G.P.A. dated 01.02.2021 along with the instant applications.

7. Plaintiff No.1 and 5 expired on 21.10.2019 and 06.12.2019. However, P/C has applications on 13.08.2021. The Hon'ble High Court of Karnataka issued a **Circular No. HCLC. 59/2020 dated 19.01.2022** directing the Courts all over Karnataka to exclude the period from 15.03.2020 to 28.02.2022 for the purposes of

limitation. Besides the aforesaid exclusion there is a delay of 5 months 22 days and 3 months 9 days in filing the instant applications. Nevertheless, P/C has put forth sufficient cause for the said delay.

8. Article 120 of the Limitation Act, 1963 says that under the Code of Civil Procedure, 1908 (5 of 1908), to have the legal representative of a deceased plaintiff or appellant or of a deceased defendant or respondent, made a party ninety days from the date of death of the plaintiff, appellant, defendant or respondent as the case may be.

9. Article 121 of the Limitation Act, 1963 provides that for an application under the Code of Civil Procedure for an order to set aside abatement, the period of limitation is 60 days from the date of abatement.

10. Section 5 of the Limitation Act provides that any application may be admitted after the prescribed period if the applicant satisfies the court that he had sufficient cause for not making the application within such period.

11. The Hon'ble Apex Court in **N.Balakrishnan v. M.Krishnamurthy reported in (1998) 7 SCC 123** observed as follows.

“It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse.”

12. The Hon’ble Apex Court in **Ram Nath Sao vs. Gobardhan Sao reported in 2002 (3) SCC 195** observed thus :

“Thus it becomes plain that the expression **“sufficient cause”** within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bonafides is imputable to a party. In a particular case whether explanation furnished would constitute “sufficient

cause” or not will be dependent upon facts of each case.”

13. Hence, in view of the same, I proceed to pass the following.

ORDER

The instant applications filed by the Plaintiff No.2 is hereby allowed.

For clarification call on 07.02.2023.

Addl. Civil Judge & JMFC-II,
Karwar.