

ORDER ON I.A. NO. VI

I	Provision under which the application is filed	U/o XXII Rule 4 and Sec.151 of C.P.C.
II	Relief sought for	Seeking permission to implead the proposed Lrs. of deceased defendant No.2.
III	The date on which the application filed.	19-09-2024
IV	Number of application.	I.A.No.VI
V	The date on which the objection filed by opponent.	Counsel for defendant No. 1 has filed objection on 06.11.2024. Proposed defendant No.2(1) has filed objection on 15.11.2024.
VI	The date of which the order passed on the application.	24-01-2025

The counsel for the plaintiff has filed this application praying to implead the proposed Lrs. of deceased defendant No.2.

2. In the memorandum of facts accompanying to the application, it is stated that, the defendant No.2 has died on 10-08-2022 and prays to implead the proposed Lrs. of defendant No. 2 as supplemental defendants.

3. On the other hand, the counsel for the defendant No.1 has filed objection to this application and contended that, the application is not maintainable either under law or on facts and the application is not in consonance with civil rules of practice. Further, it is stated that, the application is filed with memo of facts and same is not permissible. The plaintiff has filed the application to drag the proceedings, hence prays to dismiss the application.

4. The counsel for the proposed defendant No.2(1) has filed objection stating that, the plaintiff has fail to file an application U/Order XXII Rule 9 of C.P.C., seeking to set aside the abatement and also no application has filed under section 5 of Limitation Act. This application is filed after lapse of four months from the death of defendant No.2 and prays to dismiss the application.

5. Perused the I.A., objection and death certificate of deceased defendant No.2.

6. The following points are arise for my consideration:

Point No.1 :Whether the plaintiff made out grounds to allow the I.A No.VI ? If so,

Point No.2 : What Order?

7. My findings on the above said points are as under:

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

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

R E A S O N

8. **Point No.1** : The plaintiff has filed the instant suit against the defendants for declaration and permanent injunction with respect to the schedule property. When the matter is posted for appearance of the defendant No.2, the defendant No.2 is reported dead.

9. On careful perusal of the records, the deceased defendant No.2 who died on 10-08-2022 as per the death certificate produced by the proposed plaintiff. The plaintiff has filed this application on 09-09-2024. For this, I have relied upon the decision reported in **AIR 1985 SC 1** wherein it is held that: "The Rules of procedure U/o.22 are designed to advance justice and should be so interpreted as not to make them penal statutes for punishing erring parties. On sufficient cause being shown, the delay in bringing the legal

representatives of the deceased party on record should be condoned.”

10. In the present case the defendant has taken a contention that, the applicant has not filed separate application to condone the delay in filing the impleading application and setting aside abatement. The Hon’ble Supreme Court has clearly held in the case of **Sesh Nath Sing and another V/s Baidyabathi Sheoraphuli Co-Operative Bank Ltd., and another** reported in **(2021) 7 SCC 313** that; there is no bar to exercise the discretion to condone delay U/Sec.5 of Limitation Act in the absence of formal application. In the present case though the applicant has not filed separate application U/Sec.5 of the Limitation Act, the plaintiff has stated the reasons for delay in his application that, the GPA holder of the plaintiff has went to abroad. It is important to note here that, the court shall not be hyper-technical while deciding the LRs application U/O.XXII of C.P.C. If the application is allowed no harm will cause to the defendant rather it may help the court to adjudicate the dispute between the parties in a effective manner. If the application is rejected on the technical ground that the applicant has not filed the separate applications for condonation of delay and setting aside abatement, it may cause

multiple proceedings. Such being so, it is just and necessary to permit the LR of the deceased defendant No.2 to come on record for proper adjudication of the matter. However the delay caused by the plaintiff shall be compensated by imposing costs. Hence, I answer point No.1 in the **Affirmative**.

11. Point No.2 : In view of answering point No.1 in the Affirmative, I proceed to pass the following:

ORDER

The I.A.No.VI filed by the plaintiff is hereby allowed on cost of Rs.200/-.

The cost shall be paid to the TLSC, Bhatkal.

The L.R. of deceased defendant No.2 is permitted to come on record as defendant No.2(a) to (g).

Further, plaintiff is directed to amend the cause title of the plaint by impleading the Lrs of deceased defendant No.2.

For carrying out amendment and for filing of amended plaint.

Call on 19-02-2025.

Sd/-

Addl. Civil Judge &
JMFC, Bhatkal.