

**ORDER ON I.A. NO. IV**

I	Provision under which the application is filed	U/o XXII Rule 4 of C.P.C.
II	Relief sought for	Seeking permission to implead the proposed Lrs. of deceased defendant No.1.
III	The date on which the application filed.	22-03-2025
IV	Number of application.	I.A.No.IV

V	The date on which the objection filed by opponent.	Proposed defendants have not filed objection.
VI	The date of which the order passed on the application.	04-08-2025

The counsel for the plaintiff has filed this application praying to implead the proposed Lrs. of deceased defendant No.1.

**2.** In the Affidavit accompanying to the application, it is stated that, the defendant No.1 has died on 29-12-2024. the proposed defendants are stated in accompanying application are the legal heirs of the deceased defendant No.1. The cause of action against them survives, hence they are the necessary parties to this suit. Apart from these persons there are no other legal heirs to the deceased plaintiff. Hence prays to implead the proposed Lrs. of defendant No. 1 as proposed defendants.

**3.**After service of notice on I.A No.IV, the proposed defendant No.1(1) to D1(4)) appeared before this court through through their counsel and they have not filed objection to the application.

**4.** Perused the I.A., objection and death certificate of deceased defendant No.1.

5. The following points are arise for my consideration:

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

**Point No.2** : What Order?

6. 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**

7. **Point No.1** : The plaintiff has filed the instant suit against the defendants for permanent injunction and possession with respect to the schedule property. When the matter is posted for arguments of preliminary issues, the defendant No.1 is reported dead.

8. On careful perusal of the records, the deceased defendant No.1 who died on 29-12-2024 as per the death certificate produced by the plaintiff. The plaintiff has filed this application on 22-03-2025. 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.”

9. 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.1 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**.

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

**ORDER**

The I.A.No.IV filed by the plaintiff is hereby allowed.

Further, plaintiff is directed to amend the cause title of the plaint by impleading the Lrs of deceased defendant No.1.

For carrying out amendment and for filing of amended plaint.

Call on 16-08-2025.

**Sd/-**

Addl. Civil Judge &  
JMFC, Bhatkal.