

**10-11-2017**

**ORDERS ON I.A. NOS. I TO III**

This is I.A.No.II filed by learned counsel for the petitioners under Order XXII Rule 4 of C.P.C. seeking to implead the proposed respondents No.8(a) to (c) to the proceedings.

In an affidavit filed along with I.A.No.II, it is stated that the respondent No.8 died on 30-6-2016 leaving behind one son and two daughters as mentioned in I.A. The persons mentioned in I.A. are the legal representatives of the deceased

respondent No.8. Therefore, it is necessary to bring the persons shown in I.A. as parties to the petition. Accordingly, he has prayed to allow I.A.No.II.

I.A.No.III is filed by learned counsel for the petitioners under Or.22 Rule 9 CPC seeking to set aside the abatement against the deceased respondent No.8.

In the memo of facts, it is stated that the respondent No.8 died on 30-6-2016 and the petitioner was not aware of the death of her. There has been delay in bringing the legal representatives on record.

I.A.No.I is filed under Sec. 5 of Limitation Act seeking to condone the delay in bringing the legal representatives of deceased respondent No.8 on record.

In an affidavit, the deponent has stated that he came to know about the death of respondent No.8 recently as he is residing in Yellapur, (U.K.). There has been delay in filing the application seeking to bring the legal representatives on record

and it is not intentional. Accordingly, the deponent has prayed to allow the I.A.

After issuance of notice to the legal representatives of deceased respondent No.8, they have not appeared before the Court.

Heard on both the sides and perused the materials.

The point for my consideration is that:-

Whether the applicants have made out grounds to allow above I.As.?, if so, what order?

The instant petition is for the final decree proceedings instituted upon the judgement and decree drawn up in R.A.Nos.2/2013 & 6/2013 (O.S.No.119/2007). As found from the death certificate and above applications, the respondent No.8 died on 28-6-2016 and she was the party to the said suit and appeals. The proposed respondent No.8(a) to (c) are stated to be the legal representatives of her. As she died after

the disposal of the appeals in said R.As., instant I.As. are filed to bring the legal representatives of her on record.

As per Article 120 of the Limitation Act 1963, the legal representatives of a deceased respondent should be brought on record within a period of 90 days from the date of death of the respondent. After expiry of that period, the suit shall abate so far as the deceased respondent is concerned if no application is made under Rule 4 of Order 22 within that period of 90 days.

In this case, admittedly the respondent No.8 died on 28-6-2016. The period of 90 days would expire as on 27-9-2017. I.A.Nos.I to III are filed on 23-03-2017 after lapse of almost 6 months. Thus, the petitioners have not taken steps to bring the legal representatives of the deceased respondent No.8 on record in time. Thus, the petition is abated against the deceased respondent No.8.

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 Sec.5 of the Limitation Act shall apply to the applications filed under Sub Rule (2).

Sec.5 of the Limitation Act gives power to the court to admit any application other than application under any of the provisions of Order XXI CPC even after the prescribed period if the applicant satisfies the court that he had sufficient cause for not making the application within such period.

Since the petition is for final decree proceedings, it is necessary to adjudicate the matter in dispute between all parties. Though the applicants have not completely mentioned the grounds for failure in filing the applications within a period of

limitation, it is very much necessary to bring legal representatives of deceased respondent No.8 on record for proper adjudication of the case & to avoid the multiplicity of the proceedings and also in the ends of justice and equity by imposing costs.

The list of the legal representatives of deceased respondent No.8 shown in I.A.No.II is not disputed at this stage by other side. Further, there are no objections even from other side to the above applications and the legal representatives have not appeared to contest the case. More so, there is a delay of not more than 6 months. 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 respondent No.8 in enabling the applicants to bring the LRs. of deceased respondent No.8 on record, no hardship will be caused to other parties. In this regard, the court has relied upon the ruling of Hon'ble Apex

Court reported in **1995 Supp.(2) SCC 529**. Hence, the applicants have clearly made out sufficient grounds to allow above I.As. Accordingly, above point is answered in the '**Affirmative**' with the following:-

**:: O R D E R ::**

I.A.No.II filed under Order XXII Rule 4 of C.P.C., I.A.No.III filed under Order XXII Rule 9 C.P.C. & I.A.No.I filed u/sec.5 of Limitation Act by learned counsel for the petitioners are hereby allowed on costs of Rs.300/-.

The delay in filing an application for an order to set aside the abatement of proceedings against deceased respondent No.8 is hereby condoned. The order of abatement against respondent No.8 is hereby set aside. The legal representatives of deceased respondent No.8 are hereby brought on record in the place of deceased respondent No.8.

Learned counsel for the petitioners is hereby directed to carry out amendment in the petition and also directed to file amended petition.

Civil Judge, Siddapur.

