

MHAH180003572012



**Order Below Exh. 199 in R. C. S. No. 119/2012**

(Kanta Shashikant Saraf Vs. Madhukar Vinayak Udawant and others)

The application is filed by the plaintiff to condone the delay in setting aside abatement order against defendant No. 6 on record. Perused the application and the say filed by the defendants. Heard learned advocates for the plaintiff and the defendants

2] The plaintiff submitted that the present suit is for partition, declaration and perpetual injunction. During pendency of the suit, defendant No. 6 namely Suman Jagannath Bidkar passed away on 06/11/2022. It was necessary to bring her legal representatives on record. But, the legal representatives of defendant No. 6 were not brought on record within the prescribed statutory period due to unavailability of death certificate within time. Therefore, the suit was abated against defendant No. 6. Hence, the plaintiff prayed to condone the delay in bringing the legal representatives of defendant No. 6 on record to decide the suit on merits.

3] The defendants filed their say overleaf of the application. They submitted that the application is not true and reasonable. Therefore, they prayed for rejection of the application.

4] In the present case, there is admittedly delay in filing the present application. Considering the nature of suit, the right to sue survives. The contentions put forth by the plaintiff is supported by an affidavit. The court has to exercise its discretion in the interest of justice by keeping in mind the right survives against the legal representatives of the deceased and the prayer of condonation of delay has to be considered liberally. If the delay is condoned, the suit can be determined on merits.

5] Considering the nature of the suit, in order to settle actual controversy between both the parties completely, it will be just and proper to allow application subject to costs of Rs.500/- payable to be deposited in Court for delay. In view of above discussion, in the interest of justice, following order is passed:

### **ORDER**

The application is allowed subject to costs of Rs. 500/- (Rupees Five Hundred Only) to be deposited by plaintiff in the Court.

Date: 13/02/2025

**(Aditya K. Shinde),**  
3<sup>rd</sup> Jt. Civil Judge Junior Division,  
Rahuri.