

MHAH180003572012



**Order Below Exh. 201 in R. C. S. No. 119/2012**

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

The application is filed by the plaintiff for setting aside abatement of the suit against defendant No. 6. Perused the application and say filed by the defendants. Heard learned advocates for the plaintiff and the defendants.

2] The suit is filed 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 stipulated period. Therefore, the suit was abated against defendant No. 6. Hence, the plaintiff prayed to set aside the said abatement for the purpose of determining the actual controversy on merits.

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

4] As per Order XXII Rule 4 of the Code of Civil Procedure, 1908, where within the time limited by law, no

application is made for bringing legal representative of the deceased on record, the suit shall abate as against the deceased defendant. If the appropriate steps are not taken for substitution and bringing the legal representatives of the deceased party in time and when the right to sue survives, abatement of suit takes place automatically.

5] The plaintiff has filed this application for bringing legal representatives of deceased defendant No. 6 on 20/04/2024. On perusal of record, it appears that defendant No. 6 died on 06/11/2022. Article 120 of the Limitation Act 1963 provides 90 days limitation period for bringing legal representatives of the deceased on record from the date of death. In the present case, there is admittedly delay in filing the present application. Considering the nature of suit, the right to sue survives.

6] 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 deceased defendant No. 6 and the prayer of setting aside an abatement has to be considered liberally. If the abatement is set aside, the merits of case can be determined and if the abatement is not set aside then, the parties would be deprived in proving their claim and their rights would be in peril.

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

**ORDER**

1. The application is allowed.
2. Abatement in respect of deceased defendant No. 6 namely Suman Jagannath Bidkar is hereby set aside subject to costs of Rs. 500/- to be deposited in the Court by the plaintiff.

**Date:** 13/02/2025

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