

MHAH180003572012



Order Below Exh. 203 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 bringing the legal representatives of defendant No. 6 on record.

2] Perused the application and the say filed by the legal representatives of defendant No. 6. Heard learned advocate for the plaintiff and learned advocate for the legal representatives of defendant No.6.

3] The plaintiff submitted that the present suit is for partition, declaration and perpetual injunction of the suit property. During pendency of the suit, defendant No. 6 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.

4] The defendants filed their say overleaf of the application. They submitted that the application is not true

and proper. Therefore, they prayed for rejection of the application.

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 passed away 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 representative of deceased defendant No. 6 and the prayer of delay in bringing legal representative on record has to be considered liberally. If the delay is condoned, the suit can be determined on merits.

7] 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. 300/- to be deposited in the Court for causing 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. 300/- to be deposited in the Court by the plaintiff.

Date: 13/02/2025

(Aditya K. Shinde),
3rd Jt. Civil Judge Junior Division,
Rahuri.