

MHAH180011102013



Order passed below Exh. 104 in R.C.S No. 375/2013
(*Thakubai Pandurang Pilgar and others Vs. Rambhau Tukaram Kanade and others*)

- 1] The application is filed by the plaintiff No. 1 for condonation of delay caused in filing application for taking legal representatives of deceased plaintiff No. 2 on record.
- 2] Perused the application and say filed by defendants.
- 3] Heard learned advocate of the plaintiff and the defendants.
- 4] The following points arise for determination and I have recorded my findings thereon with reasons as under.

<u>Points</u>	<u>Findings</u>
1. Whether there are sufficient grounds to condone the delay caused in bringing LR on record ?	Yes
2. What order ?	The application is allowed.

REASONS

As to point No. 1

- 5] It appears from the perusal of record that, the plaintiff No. 2 namely Housabai Rakhama Ghandat is died on 30.03.2018. Article 120 of

the Limitation Act, 1963 prescribes limitation of 90 days for bringing legal heirs and representatives of the deceased party. So, it was the duty of the plaintiffs to bring his legal heirs of the deceased plaintiff within 90 days from his death. It appears that, the plaintiff No. 1 has failed to bring the legal heirs of the deceased within the prescribed period.

6] It is to be noted that, the plaintiff No. 1 had filed the application for bringing legal heirs of deceased plaintiff No. 2 on 23.08.2024. It is submitted that, the legal representatives of the plaintiff No. 2 are uneducated and they have no legal knowledge. Therefore, they could not bring LRS of the deceased plaintiff within stipulated time. Hence, she has prayed for allowing the application.

7] The defendants have objected the application by filing say at Exh. 111. It is contended that, the plaintiff No. 1 is not having any right to file this application. This application cannot be moved at this stage as the matter is pending for the final argument. The plaintiff No. 2 has died on 30/03/2018. However, the legal representatives of the plaintiff No. 2 did not file the application within the prescribed period of the limitation. Therefore, the suit against the plaintiff No. 2 is abated. The plaintiff No. 1 was having idea of the death of the plaintiff No. 2 as she was the sister of plaintiff No. 2. However, she has deliberately did not file the said application. The present application is filed after six and half years after the death of the plaintiff No. 2. Therefore, the application is not within the prescribed period of the limitation. The said application is not maintainable. Therefore, it is prayed to reject the application.

8] It is to be noted that, present suit is filed for declaration and for separate possession against the defendants. The reasons mentioned by the plaintiff No. 1 for delay condonation are not justifiable. However, considering nature of suit and for deciding matter on merit the delay needs to be condoned. No prejudice will be caused, if application is allowed. Considering the nature of the suit, in order to settle real controversy between the parties, it will be just and proper to condone the delay. In the result, I proceed to pass following order.

ORDER

- 1 The application is allowed.
- 2 The delay caused in filing application for taking legal representatives of deceased plaintiff No. 2 on record, is hereby condoned. The abatement against the plaintiff is set-aside.
- 3 The application is disposed of accordingly.
- 4 C.O.A.

(Dictated and pronounced in open court.)

Date: 08/10/2024

(Sou. R.S. Tapadiya)
Jt. Civil Judge Junior Division
Rahuri.

C E R T I F I C A T E

I affirm that the contents of this PDF file Judgment/Order is same word to word as per the original judgment.

- (a) Name of the Stenographer : Sou. J. N. Gali (Steno L.G)
- (b) Court : Jt. CJJD & JMFC, Rahuri
- (c) Date of Judgment/Order : 08/10/2024
- (d) Judgment/Order signed by : 08/10/2024
P.O on
- (e) Judgment/Order uploaded : 08/10/2024
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