

MHAH180011102013



Order passed below Exh. 100 in R.C.S No. 375/2013

(Thakubai Pandurang Pilgar and others Vs. Rambhau Tukaram Kanade and others)

- 1] The plaintiff No. 1 has moved present application to condone the delay caused in setting aside an abatement order.
- 2] Perused the application and say filed by defendants.
- 3] Heard learned advocate for the plaintiff No. 1 and learned advocate for defendants.
- 4] The plaintiff No. 1 has filed present suit for declaration and for separate possession of the suit property. During pendency of the suit, the plaintiff No. 2 namely Housabai Rakhama Ghandat has died on 30/03/2018 and it is necessary to bring his legal heirs on record. Therefore, the suit was abated against the plaintiff No. 2. The plaintiff No. 1 through this application has prayed to condone the delay caused in filing application for setting aside the said abatement.
- 5] 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.

6] It is to be noted that as per Order XXII Rule 4 sub rule (3) of the Code of Civil procedure, where within the time limited by law no application is made for bringing legal heirs of the deceased on record, the suit shall abate as against the deceased plaintiff. If the appropriate steps are not taken for substitution and bringing the legal representatives of the deceased party in time when the right to sue survives, abatement of suit takes place automatically.

7] Article 121 of the Limitation Act 1963 provides 60 days limitation period for filing an application to set-aside an abatement order. In the case in hand, there is admittedly delay of more than 6 years in filing the present application.

8] 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. On perusal of record, it appears that, the plaintiff No. 2

died on 30/03/2018. Considering the nature of suit, the right to sue survives.

9] It is to be noted that, the contentions put forth by the plaintiff is supported with affidavit. The court has to exercise its discretion in the interest of justice by keeping in mind the right survives against the legal heirs of deceased plaintiff No. 2 and the prayer of setting aside an abatement has to be considered liberally. If the delay in setting aside an abatement order is condoned, the merits of case can be determined.

10] 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. 1,000/- payable to the defendants for compensating them for delay. In view of above discussion, in the interest of justice, I pass the following order.

ORDER

1	The application is allowed subject to costs of Rs. 1,000/- payable to the defendants.
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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
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- (e) Judgment/Order uploaded : 08/10/2024
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