

ORDER BELOW EXH.38 IN R.C.S. NO. 130/2014.

The plaintiff has filed the present application for setting aside abatement of the suit against the deceased Defendants No. 01 and 02.

02. Perused the application, say and other material on record. Heard learned Advocate for both parties and considered their submissions.

03. On perusal of the record, it appears that the plaintiff have instituted the present suit for seeking relief of maintenance. During the pendency of the suit, the defendants No.01 and 02, passed away and therefore it became necessary to bring their legal representatives on record. However, the legal representatives of the defendants No. 01 and 02 were not brought on record within the stipulated period and consequently the suit was abated against the defendants No. 01 and 02. Through this application, the plaintiff has prayed for setting aside the said abatement.

04. The defendants have objected to the present application by filing their say on the overleaf of the present application. It is contended by the defendants that the present application is false and frivolous in nature. Hence, prayed for rejection of the present application.

05. According to the provisions enshrined under Order

XXII Rule 4 sub rule (3) of the Code of Civil procedure, where no application is made within the time limited by law for bringing the legal representatives of the deceased on record, the suit shall abate as against the deceased defendant. If appropriate steps for substitution are not taken within time when the right to sue survives, the abatement of the suit occurs automatically.

06. On perusal of the record, it appears that the plaintiff has filed application at Exh.36 for condonation of delay in bringing the legal representatives of the defendants No. 01 and 02. The plaintiff has also filed an application at Exh.40 for bringing the legal representatives of deceased defendants No. 01 and 02, pursuant to which notices were sent to the legal representatives.

07. It is to be noted that, the contentions put forth by the plaintiff are supported by an affidavit. The court is required to exercise its discretion in the interest of justice, keeping in mind that the right to sue survives against the legal representatives of deceased defendant No. 01 and 02 and that an application for setting aside an abatement is to be considered liberally. If the abatement is set aside, the matter can proceed on merit and the rights of parties can be adjudicated. Conversely, if the abatement is not set aside, the plaintiff would be deprived of an opportunity to establish her claim.

08. Considering the nature of the suit and in order to adjudicate the actual controversy between the parties completely, it will be just and proper to allow application. In

view of foregoing discussion, I pass the following order.

:- O R D E R :-

1. The application is hereby allowed.
2. The abatement in respect of deceased defendants No. 01 and 02, is hereby set aside.

Date:- 24/02/2026.
Place:- Jamkhed.

Sd/-
(Anushri B. Phand)
Jt. Civil Judge Junior Division,
Jamkhed