

ORDER BELOW EXH.13 IN R.C.S. NO. 161/2024

The proposed plaintiff No.1A has filed the present application for setting aside abatement of the suit against the deceased plaintiff No.01.

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 plaintiffs have instituted the present suit for seeking reliefs of declaration and possession. During the pendency of the suit, the plaintiff No.01 Ajinath Kundalik Rode, passed away and therefore it became necessary to bring his legal representatives on record. However, the legal representatives of the deceased plaintiff No.01 were not brought on record within the stipulated period and consequently the suit was abated against the deceased plaintiff No.01. Through this application, the proposed plaintiff No.1A has prayed for setting aside the said abatement.

04. The defendants have filed their say on the overleaf of the present application and contended that present application has filed only with a view to delay the proceedings. Hence, prayed for rejection of the present application.

05. It is to be noted that, the contentions put forth by the proposed plaintiff No.1A 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 plaintiff No.01 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 proposed plaintiffs, would be deprived of an opportunity to establish their claim.

06. 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 subject to payment of costs to compensate for the delay. In view of above discussion, I pass the following order.

∴ ORDER ∴

1. The application is hereby allowed.
2. The abatement in respect of deceased plaintiff No.01 Ajinath Kundalik Rode, is hereby set aside.

Date:- 16/06/2026.
Place:- Jamkhed.

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