

MHAH220008662023



R.C.S. No. 146/2023

Bapu Govinda Karpe

Vs.

Waman Keru

Mandage and Ors.

ORDER BELOW EXH.23

(Passed on 05/03/2024)

Perused the application and say of defendant No. 2. Suit proceeded ex-parte against defendant No. 1, 3 and 4.

2. Heard learned advocate Mr. S. R. Gaikwad for the proposed legal representative of the plaintiff. Also heard learned advocate Mr. K. S. Shewale for defendant No. 2.

3. After perusal of record it appears that present suit filed by the plaintiff for perpetual injunction, measurement and marking of boundaries.

4. As per Article 121 of the Limitation Act, 1963 Sixty days period of limitation prescribed for setting aside an order of abatement and from the date of abatement time begins to run. The said provision of the law is not penal in nature. It is a rule of the procedure that substantial right of the parties cannot be defeated by pedantic approach by observing strict adherence to the procedural aspect of law. Moreover, it is to be noted that said delay cannot be sole ground to reject the application when other side can be compensated for such delay. Therefore, the reasons mentioned in the application appears to be sufficient. If an application is allowed no prejudice will cause to defendants. Per contra it will avoid the multiplicity of the proceedings. For fair trial it is necessary to give an opportunity to the plaintiff. If an

opportunity is not given to the plaintiff it will cause hardship to her. Hence, with a view to grant an opportunity to the plaintiff to contest the suit on merit it will be just and reasonable to condone the delay for setting aside an abatement. So, in the interest of justice, I proceed to pass the following order.

ORDER

1. Application at Exh.23 is allowed with costs of Rs. 400/- (Rs. Four Hundred Only) to defendant No. 2.
2. Delay caused for setting aside an abatement of deceased plaintiff Bapu Govind Karpe is hereby condoned.
3. Costs be paid or deposited in Court on or before next date.

(Pronounced and dictated in open Court)

Date : 05/03/2024.

(**Rohan Vijaykumar Thayil**)
2nd Jt. Civil Judge, Junior Division
Karjat, Dist.Ahmednagar