

Order Below Exhibit No. 26

C.N.R. No. MHAH23-001635-2014

The present application has been filed by the plaintiff for setting aside abatement order and condoning delay in taking legal heirs of deceased on record.

2. It is the case of the plaintiff that, defendant no. 01 Bapu Kondiba Thorat expired on 23.08.2021. It is further submitted that, due to Covid-19 pandemic there were restriction to travel, hence, the plaintiff could not procure the death certificate of defendant no. 01. Due to which there was delay caused in taking legal heirs of deceased defendant no. 01 on record. Hence, present application deserves to be allowed.

3. The Ld. Advocate for the defendant has filed his say to the present application at Exh. 31. It is the case of the defendants that, the present application is not true and correct. Further, it is submitted that, the present application is not tenable and not legal. Further, it is submitted that, the present application is false and fabricated. It is further submitted that, the plaintiff has intentionally delayed to

take legal heirs of the deceased defendant no. 01 on record. It is further submitted that, plaintiff has collected the aforesaid death certificate on 06.09.2021, however, he failed to filed the application immediately. It is further submitted that, the plaintiff has made the present application on 04.10.2022 and delay caused intentionally to prolong the present suit. Hence, the present application deserves to be rejected.

4. I have perused the record. I have heard the Ld. Advocate for the parties. Perusal of the present application would reveals that, the plaintiff has made two prayers in the present application i.e. condonation of delay and setting aside of abatement. Further, perusal of the same reveal that, the defendant no. 01 Bapu Kondiba Thorat expired on 23.08.2021. Further, the plaintiff has produced the original death certificate of the deceased defendant no. 01 along with list of document at Exh. 30. Perusal of the same reveals that, the certificate was issued on 13.09.2021. Further, the present application is filed on 04.10.2022. Therefore, there is delay of 01 year and 22 days in

producing the death certificate on record which is not satisfactory explained. The total delay caused in filing the present application from the date of death of deceased defendant no.01 is 01 year 01 month and 11 days. Further, it is settled position of law that a liberal approach has to be adopted while condoning delay. Prejudice caused to the defendants can be compensated by imposing appropriate cost on the plaintiff. In view of aforesaid facts and circumstances, I pass the following order:

:: Order ::

1. The delay of 01 year 01 month and 11 days is condoned subject to cost of Rs. 1,000/- to be paid by the plaintiff to the defendant.
2. Further, the abatement order passed against legal heirs of deceased defendant no. 01 is hereby set aside.

Date: 24.10.2024

(N. P. Baji)
2nd Jt. Civil Judge J.D.,
S h r i g o n d a.

CERTIFICATE

I affirm that the contents of this PDF file are word to word as per original judgment.

Name of the Stenographer	: D. T. Kasare
Name of the Court	: Shri. N. P. Baji, 2nd Jt. C.J.J.D., Shrigonda.
Date of Order	: 24 -10-2024
Date of PDF	: 24-10-2024
Date of uploading	: 24-10-2024