

ORDER PASSED BELOW EXH. NO. 35

(Passed on 23.11.2021)

Plaintiff no. 2 filed this application for condonation of delay for bringing legal heirs on record. The advocate for plaintiff no. 2 submitted that, the plaintiff no. 1 Ramesh Baliramji Thak was died on 05.05.2021 due to Covid-19 at Akola. He further submitted that, the Municipal Counsel of Akola has registered the entry of death of plaintiff no. 1 on 18.05.2021 and issued certificate was on 29.07.2021. From the date of 29.07.2021 it is necessary to bring legal heirs of plaintiff no. 1 on record within 90 days. But due to unavoidable circumstance and Covid-19 situation in the country, the legal heirs of plaintiff no. 1 was not brought on record on or before 29.10.2021. The learned advocate for plaintiff no. 2 submitted that there is a delay of 13 days for bringing legal heirs on record. Hence, he prayed for condone the delay for bringing legal heirs on record by allowing this application.

2. The learned advocate for defendant filed say and submitted that, the original plaintiff no. 1 is died on 05.05.2021. The suit is already automatic abated after 90 days, against the plaintiff no. 2. There is no application for setting aside the abatement. The instant application is not legally tenable unless the abatement is set aside. Hence, he prayed for rejection of this application.

3. Heard both the Ld. advocate. Perused the application, say and the record. As per the application it appears that, plaintiff no. 1 died on 05.05.2021, therefore, it is necessary to bring legal heirs on record within 90 days. But plaintiff no. 2 failed to bringing the legal heirs on record. As per provision of order 22 of C.P.C. “ No abatement by parties death if right to sue survives.” Abatement of suit, when any of the parties in Civil Suit dies and if their right to sue survives, then the suit can be continue by the Legal Representative or Legal Heirs of the deceased

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parties. No doubt in this suit no any abatement order passed, therefore, plaintiff no. 2 not filed the set aside the abatement order. Plaintiff no. 2 filed this application for condonation of delay to bringing legal heirs on record. He wants to bringing the legal heirs of plaintiff no. 1 on record therefore, the right to sue survives. Plaintiff no. 2 mentioned in his application there is delay of 13 days but it is delay of more than 13 days. There is a legal heirs of plaintiff no. 1 and therefore, it is necessary to decide to issue on merit by taking legal heirs on record and therefore, it is necessary to condone the delay in the interest of natural justice. Hence, I pass following order.

ORDER

1. Application is allowed subject to cost of Rs. 500/-.
2. Cost goes to defendants.

Dated : 23.11.2021

(G.G. Kamble)
Civil Judge, Jr.Dn., Murtizapur.
(Court No.1), Murtizapur

CERTIFICATE

I affirm that the contents of this P.D.F. File Order/Judgment are same, word to word, as per the original Judgment/Order.

Name of the Stenographer	M.M.Dhapad
Name of the Court	Shri. G.G. Kamble CJJD & JMFC, Murtizapur.
Date of Order & Judgment	23/11/2021
Order/Judgment Signed by the P.O. on	23/11/2021
Order/Judgment uploaded on	23/11/2021