

**Order below Ex.- 56**  
**In Regular Civil Suit no. 239/2007**

1] This application is presented by the plaintiff no.2's Legal representative to condone the delay caused to appear in the proceeding. On ground that, the plaintiff no. 2 died on 15/05/2014, however, they could not present an application for the said purpose within stipulated period as all representative are residing at different places. Hence, by this application he prayed to condone the delay caused to bring legal representative on the record.

2) Defendants filed their say through their Ld. advocate, in which it is contended that, no reason is satisfactory explained and therefore, application may be rejected.

3) Heard Ld. advocate P. B. Yeole for the plaintiff's and Ld. advocate Mr. L.E. Lagad for defendants. Following point arose before me to which I proceed to record my finding along with reason hereunder:-

Sr No	Points	Findings
1	Whether reason stated in the application needs to be allowed ?	In the affirmative
2	What order ?	Application is allowed.

**:- Reasoning:-**

**As to point no. 1 :-**

4) The reason given in the application is supported by an affidavit, which is not challenged by the defendants, and therefore, the same needs to be accepted. Furthermore, period of 90 days elapsed on 14/08/2014, and therefore the suit stands abated in regard of the plaintiff no. 2, however, this abatement could be set

aside within 60 days from the day of abatement. However, that remedy does not avail then delay cause to apply for setting aside an abatement needs to be condoned vide Rule 22(4) Sub-rule (5)(b) of the CPC. However, this application appears to be presented on 12/01/2015 it means near about after 3 months, after extended period of 60 days vide Art. 121 of Limitation Act is lapsed. The said provision reads as under:-

<b>Sr. No</b>	<b>Description of Suit / Application</b>	<b>Period of limitation</b>	<b>Time from which period begins to run</b>
Art. 120	<i>Under the Code of Civil Procedure, 1908 (5 of 1908), to have the legal representative of a deceased plaintiff or appellant or of a deceased defendant or respondent, made a party.</i>	Ninety days	<i>The date of death of the plaintiff, appellant, defendant or respondent as the case may be .</i>
Art. 121	<i>Under the same Code for an order to set-aside an abatement.</i>	Sixty days	<i>The date of abatement.</i>

5) In a present suit as per the Art. 121 of Limitation Act, there is delay of near about 3 months to apply for set aside an abatement, and therefore, the plaintiff no. 1's Lrs or present applicants were bound to apply for setting aside an abatement caused against the plaintiff no. 2. In this regard provision of Rule 2 and 3 of Order XXII of CPC needs to be looked upon, which reads as under:-

Order 21 Rule 2 and 3 of CPC

*Rule 2. Procedure where one of several plaintiffs or defendants dies and right to sue survives. -Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.*

*Rule 3. Procedure in case of death of one of several plaintiffs or of sole plaintiff. -*

*(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to the sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.*

*(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.*

6) Purpose of this application was to obtain a permission to allow applicants to come on the record to proceed with the suit. This suit is for, declaratory relief about non-binding effect of the sale deed having no. 2052/1998 and 2053/1998 upon the plaintiff's. The plaintiff no. 1's legal representative are proceeding the suit, however, the plaintiff no. 2's legal representative are not came on the record within stipulated period. However, reason stated in the application is supported with an affidavit and the defendants have not challenged the same. Furthermore, the defendants have filed another suit against the present plaintiffs having no. 72/2008, in which they have presented an application to bring the present legal representative on the record. This fact shows that, reason stated in an application needs to be accepted. Hence, I answer this point in the affirmative.

**As to point no. 2:-**

7) As I recorded affirmative finding to the point no. 1 this application needs to be allowed. However, time consumed for this activity needs to be taken into consideration while imposing cost. However, it must be on cost, hence I pass following order:-

**:: O R D E R ::**

1. Application is allowed, subject to payment of cost Rs. 500/-

(Rupees Five Hundred Only) to defendants, jointly, on or before next date.

2. Upon depositing cost, further application be taken on record for hearing after complying the other requirement stipulated in the Law.
3. Failing to comply the above order within stipulated period suit be posted for further hearing.

Date:- 16/06/2015  
Georai

Sd/-  
(P. A. Jagdale)  
2<sup>nd</sup> Jt. Civil Judge Jr. Dn. Georai.

*(Pronounced in open court)*