



**ORDER BELOW EXH.37**  
(Passed on 18.09.2024)

1. Present is an application filed by appellants with a prayer to condone delay, set aside abatement and allow appellants to bring Lrs of respondent No.7 on record. Respondents filed detail reply overleaf. I have heard Advocate Mr.S.V.Agrawal. Respondents adopted reply as their argument.
2. Respondent No.7 Iqbal Shah Sattar Shah is passed away on 26.03.2022. Photocopy of his death certificate is filed on record. As per appellants respondents had not given intimation about death of respondent No.7. Hence, appellants were constrained to collect information and file necessary application. In this process much time was consumed.
3. Per contra, respondents submitted that multiple prayers can not be made in one application. Appellants deliberately refrained from disclosing exact delay. In fact there is a delay of 415 days in applying for arraying Lrs on record and delay of 355 days in setting aside abatement. Hence, application being devoid of merit may be rejected.
4. Defendant No.1 & 2 in RCS No.12/2006 are appellants. Being aggrieved by judgment and decree of Civil Judge Junior Division, Shegaon dated 29.01.2016 present appeal is preferred. Long back Lrs of respondent No.2 are taken on

record. Now respondent No.7 is dead on 26.06.2022. Period of 90 days under Article 120 of Limitation Act, 1963 to bring his Lrs on record lapsed on 26.09.2022. Sixty days for setting aside abatement under Article 121 of Limitation Act got expired on 27.11.2022. Thus, apparently there is a delay of 10 months and 24 days in bringing Lrs on record. When it comes to setting aside abatement there is a delay of around 8 months.

5. However, this being a civil dispute significant rights and liabilities of the parties are involved in the appeal. Respondent No.7 being a party to the dispute was one of the important stake holder. Application suggest respondent No.7 has three Lrs. In such circumstances Lrs of deceased respondent should get an opportunity to put forth their say while deciding appeal on merit. For just decision of case it is necessary to give opportunity to Lrs of respondent No.7.

6. Hence, grounds are satisfactory. Hence, delay in applying for setting aside abatement and for bringing Lrs on record deserves to be condoned. Lrs of respondent No.7 needs to be taken on record by setting aside abatement. However, considering delay on the part of appellants reasonable cost needs to be imposed which is payable to TLSC, Khamgaon. Hence, order.

### **ORDER**

1. Application is allowed.

2. Delay caused in applying for setting aside abatement and for bringing Lrs of respondent No.7 on record is condoned subject to cost Rs.1,000/- payable to TLSC, Khamgaon.
3. Deemed abatement is thus set aside.
4. Appellants are permitted to bring Lrs of respondent No.7 on record after payment of cost.
5. Cost shall be payable on or before next date.
6. If the cost is deposited within time then only necessary amendment be carried out in appeal memo.
7. After necessary amendment issue notices to newly added Lrs of respondent No.7.

Khamgaon  
Dt. 18.09.2024

(Prasad P. Kulkarni)  
District Judge-2,  
Khamgaon.