



R.C.S. No. 37/2018

Kasabai v. Vasudeo

MHBU180011062018

**ORDER BELOW EXHIBIT 33**

(Passed on this 12<sup>th</sup> of April, 2023)

1. This is an application by the plaintiff to condone the delay in bringing the legal representatives of the plaintiff no. 2 namely, Ramesh Nago Ekhe on record.

2. It is the case of the plaintiff that Ramesh Nago Ekhe died on 25-10-2020. His mother namely, Kasabai Nago Ekhe is already a party to the present suit as plaintiff no. 1. The deceased plaintiff no. 2 is survived by his widow, two sons and daughter. However, the plaintiff failed to bring the said legal representatives within the stipulated period of limitation due to impact of COVID-19 pandemic. Moreover, the plaintiff was out of town when the period of limitation was likely to extinguish. Hence, the plaintiff prayed to allow the application.

3. The defendant has resisted the present application vide his reply below the application. He has argued that the deceased plaintiff no. 2 is the son of plaintiff no. 1. Hence, in spite of being well acquainted regarding the demise of the plaintiff no. 2 she intentionally delayed to file the present application. Therefore, he prayed for rejecting the present application or in the alternative impose heavy cost on the plaintiff.

4. Following points arise for determination and my findings thereon and reasons thereof are as follows:

| Sr. NO. | POINTS   | FINDINGS               |
|---------|--|------------------------|
| 1       | Whether the plaintiff is entitled to condone the delay in bringing the legal representatives of Ramesh Nago Ekhe on record ? | Yes                    |
| 2       | What order ?   | Application is allowed |

### REASONS

#### AS TO POINT NO. 1 AND 2

5. Perused the record and proceedings. It is also necessary to note that the plaintiff has not filed a separate application to set aside the abatement. However, a simple prayer for condoning the delay in bringing the legal representatives on record would without specifically praying for setting aside of an abatement may in substance be construed as a prayer for setting aside abatement.

6. The plaintiff no. 2 is reported to have died during the period wherein the period of limitation was relaxed by the Hon'ble Supreme Court till 28-02-2022 due to the onset of the COVID-19 pandemic. Hence, considering the stipulated period of limitation the plaintiff have caused delay since 29-06-2022 and the present application is filed on 23-11-2022 i.e. beyond the period of 90 days from the death of the plaintiff no. 2.

7. It is the case of the plaintiff that she was unaware about the court date on 21-07-2022. Moreover, she was out of town on that date and later on 06-10-22 she was directed to file appropriate application by the court. The aforesaid reasons as to being unaware about court dates and directions by the court itself are not in any way appropriate reasons for not filing the application within time. However, it would be necessary

to note that the rights of both the parties are at stake in the present suit. Hence, if the present application is rejected the other plaintiff's would suffer irreparable loss and it may even lead to multiplicity of proceedings. Hence, it would be just and proper to hold that the plaintiff has shown sufficient cause to condone the said delay.

8. As regards to the fact that the defendant due to the lapse of time had to suffer inconvenience, it is necessary to note that such inconvenience shall be compensated by imposing some costs on the plaintiff. However, regard is also had to the fact that during the major portion of the said period the whole nation was under a lockdown due to the COVID-19 pandemic. Hence, imposing heavy costs upon the plaintiff for no immediate fault of her own would be injustice. Hence, I proceed to pass following order:

### **ORDER**

1. The application is allowed subject to cost of Rs. 800/- (Eight Hundred) to be paid by the plaintiff no. 1, 3 and 4 altogether to the defendant.
2. The delay caused to file the application to bring the legal representatives of the deceased plaintiff no. 2 namely, Ramesh Nago Ekhe is hereby condoned.
3. The cost shall be paid by the plaintiff no. 1, 3 and 4 on or before next date, in case of failure the application will stand rejected.

Date: 12-04-2023

(Uday S. Ivare)  
Civil Judge, J.D.,  
Sangrampur, Buldana