

Reg.. Civil Appeal. NO. 6/2020

(MHBU200000912020)

Kisan Zama Chavan

Versus

Gajanan Shivajirao Kharat

COMMON ORDER BELOW EXH.17 & 18

(Passed on this 5th April, 2024)

These are the applications to condone delay in bringing legal representatives of deceased appellant on record (Exh.17) and to bring legal representatives of deceased appellant setting aside abatement (Exh.18).

2. According to applicants, deceased appellant Kisan was husband of applicant Suman and father of applicant Aatishkumar. Kisan died on 15-03-2023. Appellant preferred appeal against the Judgment and Decree passed by learned Civil Judge Sr.Dn. Mehkar in Spl.C.S. No.4/2019 dated 01-01-2020. After the death of appellant, applicants were unaware about the name of advocate engaged by appellant. Hence, applicant Aatishkumar inquired about the same and then he was informed by the advocate that, names of legal heirs are required to be taken on record. Therefore, applicant Aatishkumar collected necessary documents and filed present application. However, during that exercise, delay occurred in bringing the legal heirs on record. If the delay is not condoned, the legal heirs of appellant

will suffer irreparable loss. Hence, prayed to condone the delay and permit to bring the legal representatives of deceased appellant on record setting aside abatement.

3. Respondent opposed the applications by filing say on the overleaf of the applications.

4. I have gone through the applications as well as death certificate filed on record. Death certificate shows appellant Kisan Zamsing Chavan died on 15-03-2023. Present applications are filed on 16-06-2023. Judgment and decree passed by learned trial court shows that, dispute in between the parties is in respect of immovable property. Thereby, right to sue survives. Further, application to condone the delay and to bring legal representatives of deceased appellant on record by setting aside abatement are filed on affidavit. The reasons mentioned in the application appears to be genuine one. There is no reason to disbelieve the contention of the applicants. Under such circumstances, I am of the view that, applicants had shown sufficient cause to condone the delay. Further looking to the nature of dispute, I am of the view that, it is better to decide the appeal on its own merit and it will not cause any prejudice to the respondent. Under such circumstances, both the applications Exh.17 & 18 deserves to be allowed by imposing cost upon applicants. Hence, I pass the following order.

ORDER

1. Applications Exh. 17 and 18 are hereby allowed subject to cost of Rs.500/- (Rs. Five hundred only) to be paid by applicants to respondent.
2. Delay caused in bringing the legal representatives of deceased appellant Kisan Zama Chavan on record is hereby condoned.
3. Deemed abatement is hereby set aside.
4. Applicants are permitted to bring their names on record.
4. Applicants shall bring their names on record on or before next date and submit consolidated copy of appeal memo on record.

Dt.05-04-2024

(S.M.Chandgade),
District Judge – 1, Mehkar,
District Buldana

Certificate

“I affirm that, the contents of this PDF file order are same word for word as per original order.”

Name of Steno :- S.E.Chaudhari, Stenographer Grade-1,

Name of Court :- Court of District Judge-1 and A.S.J.Mehkar

Date of order :- 05-04-2024

Order uploaded on :- 06-04-2024