

IN THE COURT OF JUDGE CO-OPERATIVE COURT NASHIK**ABN. Case No- 628/2021****Common order Below Exhibit 20 & 22**

1. Vide application filed below Exh 20 the disputant bank has prayed to set aside the abatement of dispute against deceased opponent No 5, whereas vide application filed below Exh 22 it has prayed for granting it permission to bring on record the Lr's of deceased opponent. In both the applications it is the contention of disputant bank that, present dispute is filed by it claiming recovery of the loan amount from opponents. On issuing summons of the dispute to opponents, after receipt of postal remark on postal envelope containing summons, about death of opponent No 5, the disputant bank for first time came to know about death of said opponent. Thereafter the disputant bank has obtained necessary information about the deceased and filed these applications to bring on record his Lr's. It is submitted that the opponent No 5 is died on **20.08.2017** leaving behind him the Lr's as mentioned in the application. They have inherited all the movable and immovable properties left by the deceased opponent and they are in their possession and cultivation and hence they are legally liable to repay the loan amount. The disputant bank had no knowledge about death of opponent till then and hence it could not file the application within time. Accordingly with these contentions the disputant bank has lastly prayed for allowing both the applications as prayed in it.

2. The proposed Lr's are duly served with show cause notices of both the applications but they have failed to appear and hence applications are proceeded further Ex-parte against them.

3. Heard learned Advocate Shri R.V.Walzade for disputant bank. Perused the record.

4. The averments made in the application and the copy of death certificate produced on record by disputant bank itself shows that the opponent No 5 herein is died prior to filing of the present dispute. It is clearly mentioned in the application that the opponent No 5 is died on

20.08.2017. Admittedly present dispute is filed on **29.11.2021**. It is therefore clear that much before filing of this dispute the opponent No 5 has / is died. Thus the dispute has been filed against dead opponent. Needless to state that the question of bringing on record the Lr's of a deceased party arises only if it is shown that such party has died during pendency of the suit or dispute. As per Order 22 rule 4 of CPC, if the defendant dies during pendency of a suit then the court may permit the Plaintiff to bring on record his legal representatives if such application is filed within prescribed period of limitation & right to sue survives in plaintiff. In my considered opinion, having regard to the fact that, the opponent No 5 in this case is died on 20.08.2017, i.e. prior to filing of present dispute, the provisions of Order 22 Rule 4 of CPC has no application to the case in hand. The said provision is applicable only when any of the defendant to the suit dies during pendency of the suit and right to sue survives in plaintiff. Therefore if the death has occurred before filing of the dispute then in my opinion, the death being pre-suit death, the suit has to be treated as being filed against dead defendant. In such a case the death since not took place during pendency of the suit or dispute, there is no question of abatement thereof. Therefore there is no question arises to set aside the abatement. In this case the disputant bank might not be aware about death of opponent No 1. However once it is found that the death of opponent is occurred much prior to filing of the dispute then merely because, the disputant bank came to know about such death only after receipt of the postal summons / remark, it can not be permitted to bring on record the Lr's of deceased opponent. In the above circumstances both the applications cannot be allowed as prayed by disputant bank. Hence the following order,

Order

1. The applications stands rejected.

2. No order as to cost

Date 06/07/26


(U M Kulkarni)

Judge

Co-op. Court Nashik.