



RCS NO.127/2008.

Sudhakar V/s Balu.

Order passed below Application Exhibit – 185.

(Abatement set aside.)

It is reported that, Deft.No.2 Annasaheb Bapu Bawade is no more. He died on 25-07-2020. Leaving behind his LR's. His wife Muktabai also died on 04-04-2021.

(2) This court after hearing both the sides has passed elaborate order and, thereby, condoned the delay caused to set aside the abatement order.

(3) Record shows that, Deft.No.2 Annasaheb Bapu Bawade is no more. He survived by LR's. His wife Muktabai also died on 04-04-2021. As no steps are taken, proceedings abates against him. Right to sue survive in this case. He survive by his legal heirs. Further, it appears that, in order to seek the relief to set aside the abatement order, delay caused. Already delay has been condoned.

Heard learned counsel for both the sides.

(4) The main thrust of argument advanced by the learned counsel for the Deft/s. is that, the Plff/s. are not diligent and due to their act, the matter is protracting.

(5) I have minutely perused the available record and nature of the present suit. It is rule of law that, the death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives. I have perused the provisions as envisaged in Order XXII of the Code. I have also perused Article 120 which reads under the Code of Civil Procedure, 1908, to have the legal representative of a deceased plaintiff or appellant or of a deceased defendant or respondent, made a party, prescribed period of limitation is ninety

days and time from which period begins to run is date of the death of the plaintiff, appellant, defendant or respondent, as the case may be. Further, as per Art.121 under the same Code for an order to set aside an abatement, sixty days, the date abatement.

(6) If application is allowed no prejudice would be caused to the other side. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Opportunity of being heard must be given to the party. Principle of natural justice requires to be followed. In order to enable the court to effectively and completely adjudicate upon and settle all the questions involved in the suit, it is necessary to allow the application. Hence, the order :-

ORDER

(i) Application is allowed.

(ii) Abatement order is set aside subject to costs of Rs.500/- payable to the contesting Deft/s.

(Ganesh A. Ghule)
3rd Joint Civil Judge
(Jr.Divn.)
Ichalkaranji.

Date : 06-06-2023.