

MHKO050019902022



ORDER BELOW EXH. 33 REG. CIVIL SUIT NO. 211/2022

1. This is the application filled by the plaintiff for setting aside abatement order passed against the defendants no. 3 and 4.
2. Plaintiff stated that suit is filed for declaration, injunction and partition. Defendant no.4 purchased some portion of suit property without the consent of plaintiff. So defendant no. 4 was required to be add party to this suit. After issuing summons and notice to defendant no. 4 it appears that he was died. Defendant no. 4 Aappaso Balku Koregave was died on 12.10.2021. It is necessary to bring legal heir of defendant no. 4 withing 90 days. Unavailability of information as to legal heirs of defendant no. 4, the abatement order was passed.
3. Defendant no. 4 was residing at Herle and plaintiff is residing so far way from defendant no. 4. Plaintiff immediately did not get the information of death of defendant no. 4. Between them Corona and lock down was going on. Hence, he could not add defendant no. 4 as party. Defendant no. 4 have wife, son and daughter. After the death of defendant no. 4 plaintiff collected death certificate of defendant no. 4 and filed application. So legal heirs of

defendant no. 4 are necessary. If application is allowed defendant will not suffer irreparable loss. Hence, prayed to condone the delay.

4. Legal heirs of defendant have filled their say on the same application and contended that plaintiff deliberately file this application to prolong the matter. He has not given documentary evidence alongwith. Hence, application be rejected with costs.

5. Heard advocate. It appears that right to sue survives against the defendant no. 4. But the plaintiff has not give cogent reason for setting aside the abatement order. Mere casual application is not enough. Plaintiff has not mentioned any cogent reason in the application. But the right to sue survives against the defendant no. 4. Hence, this application is liable to be allowed. Hence the order.

ORDER

Application at Exh. 33 is allowed.

Ichalkaranji
Date: 22.10.2024

(S. S. Pednekar)
4th Jt. Civil Judge Junior Division,
Ichalkaranji