

MHKO050021622016



ORDER BELOW EXH. 110 REG. CIVIL SUIT NO. 145/2016

1. This is the application filled by the plaintiff for setting aside abatement order passed against the defendant.

2. Plaintiff has stated that defendant no. 5 Shamshuddin Gulab Gawandi was died on 30.10.2020. There is delay of three years one month and eight days to bring legal heirs of defendant no. 5 on record. Defendant no. 5 is necessary party in the suit, her legal heirs is also necessary parties in the suit. Plaintiff is widow woman. She is illiterate. She has no knowledge of law. She did not bring legal heirs on record due to corona and lock down. Hence, she prayed to set aside said abatement order passed against the defendant no. 5.

3. Defendant no. 2 has filled his say at Exh. 113 and contended that defendant no. 5 was died on 30.10.2020. After 90 days defendant no. 5 was automatically abated. There is three years delay. There is no reason mentioned to delay the matter. The reason of illiteracy is not acceptable. Plaintiff and defendant are nearby resident. Defendant no. 5 is brotherhood of plaintiff, so reason that plaintiff does not know about death of defendant no. 5 is not

acceptable. The legal heirs of defendant no. 5 is residing in their share. Plaintiff know name of all legal heirs of defendant no. 5. Plaintiff know that defendant no. 5 was died, then plaintiff filed his affidavit. If delay condone application is liable to rejected, then there is not question of amendment application. Hence, prayed to reject the same with costs.

4. Heard advocate. It appears that right to sue survives against the defendant no. 5. 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.5 . Hence, this application is liable to be allowed. Hence the order.

ORDER

Application at Exh. 110 is allowed.

Ichalkaranji
Date: 21.03.2024

(S. S. Pednekar)
6th Jt. Civil Judge Junior Division,
Ichalkaranji