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**Special Civil Suit No.4/2012.
CNR NO.: MHKO07-000100-2012.**

COMMON ORDER PASSED BELOW EXH. 44 AND 45

By way of application at Exh. 44, plaintiff has prayed to set aside abatement of suit against defendant No.4 and sought permission to bring on record legal heirs of defendant No.4, whose names are given in application at Exh.45.

2. Defendant No.4 has died on 5.9.2018. 90 days have completed on 4.12.2018. Thus, plaintiff has filed application within 60 days from 4.12.2018 to set aside abatement. It is true that legal heirs are not bring on record within limitation period. However, application for setting aside abatement is filed within stipulated period as per Article 121 of the Indian Limitation Act.

3. Learned advocate for defendant has not given any intimation to Court as per Order 22 Rule 10-A of the Code of Civil Procedure regarding death of defendant No.4. Therefore, reasons stated by plaintiff for non bringing legal heirs of defendant No.4 on record within 90 days, are proper. In such circumstances I do not deem it necessary to issue show cause notice to the legal heirs of deceased defendant as to why abatement should not be set aside. Suit is more than five years old. In such circumstances, it would be proper to allow this applications. In result, I pass following order.

ORDER

(1) Application at Exh. 44 and 45 are allowed.

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- (2) Abatement of suit against defendant No. 4 is hereby set aside and permission is granted to bring legal heirs of deceased defendant No.4 on record.
- (3) Issue suit summons to legal heirs of defendant No.4.

Sd/-

Jaysingpur.
Dt.:21.01.2019.

(K.G. Sawant)
Civil Judge Senior Division,
Jaysingpur.

