

MHKO070007962016



**COMMON ORDER BELOW EXH. 56, 57 AND 58
IN REG. CIVIL SUIT No. 149/2016
(Sourabh Upadhye - Vs. - Veerkumar Upadhye & Ors.)**

Vide application below Exh. 56, plaintiff is requesting for condonation of delay caused in bringing on record legal representatives of defendant No. 01 ; vide application below Exh. 57 plaintiff is requesting for setting aside the order of abatement against defendant No. 01 ; and vide application below 58 the plaintiff is requesting for bringing on record legal representatives of deceased defendant No. 01.

02. Say of defendants to Exh. No. 56 and 57 is filed at Exh. 59 and 60. They prayed to reject the application with cost.

03. Heard learned advocates of both the sides. Perused record and proceeding.

04. From the contentions on record, it is seen that defendant No. 01 Virkumar Nabhiraj Upadhye expired on 25/02/2021 and all these applications are filed on record on 15/07/2022. Accordingly, *prima facie*, it is seen that there is a delay of more than nineteen months. However, Hon'ble Apex Court in **Suo Motu Writ Petition (Civil) No.3/2020 In Re: Cognizance for Extension of Limitation** directed vide order dated 10/01/2022 that "the period from 15/03/2020 till 28/02/2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings."

05. Therefore, in the light of above said directions of Hon'ble Apex Court, I am of the view that there is delay of only 5 months for bringing on record legal representatives of deceased defendant No. 01.

06. It is seen that the suit is for perpetual injunction and declaration. It is also seen that two legal representatives of deceased defendant No. 01 are already on record as defendant Nos. 2 and 3. Now the only one legal representative needs to be taken on record as defendant No. 1-a. Considering the nature of relief claimed in the suit, I am of the view that the right to sue survive against the legal representatives of deceased defendant No. 01.

07. In view of all the abovesaid, I am of the view that application deserves to be allowed subject to saddling cost for delay. Accordingly, following order:-

ORDER

1. All the applications are allowed subject to cost of Rs.500/- (Rupees Five Hundred only).
2. Plaintiff is directed to carry out suitable amendment in the plaint and also to file on record amended plaint on or before next date.
3. Thereafter, summons be issued to proposed legal representatives of deceased defendant No. 01.
4. This original order be kept below Exh. 58.
5. Cost to be in the cause.

Place - Jaysingpur.
Date - 03/10/2022

(**Anand D. Karbhajan**)
Joint Civil Judge Junior Division,
Jaysingpur, Tal. Shirol, Dist. Kolhapur.

