

COMMON ORDER PASSED BELOW EXH. 34 AND 35.

1. By way of application at Exh.34 plaintiff has prayed to condone delay in filing application for setting aside abatement of suit against defendant No.2, who has died on 27.2.2013. It is stated on behalf of applicants that after the death of plaintiff No.2 right to sue is survived for the legal heirs and her legal heirs are required to be brought on record. Delay in bringing legal heirs on record is not intentional one and hence prayed for setting aside abatement by condonation of delay. By way of application at Exh. 25, plaintiff prayed to bring on record legal heirs of deceased plaintiff No.2 Tarabai Vanjare.

2. Defendant filed his say and opposed to allow this application contending that delay of five years has taken place for bringing legal heirs on record of plaintiff No.2. Delay is intentional so as to delay the trial. Reason stated for delay is not proper. There was another suit pending between same parties i.e. Reg. Civil Suit No.212/2012 and in that suit deceased plaintiff was defendant. In that suit legal heirs of deceased Tarabai are already brought on record. Therefore, application is not tenable in the eyes of law. Hence, prayed for rejection of application. Alternatively he prayed that if Court comes to conclusion that application is to be allowed, in that case cost of Rs.5000/- may be imposed.

2

**Regular Civil Suit No.307/2012.
CNR NO.: MHKO07-000922-2012.**

3. Heard both sides and gone through the record. It appears that there is absolutely no reason given for delay caused in bringing legal heirs on record. It is merely stated that delay is not intentional and hence same may be condoned. It is needless to say that applicants are not at all diligent about their rights. It is not their case that they had no knowledge about the legal procedure or about the death of deceased. Still, in the larger interest of justice and in order to decide suit on merit, opportunity needs to be given to applicants to come on record as legal heirs of deceased and contest the suit. So far as delay of five years is concerned, same can be balanced by imposing cost on that. In result, I pass following order.

ORDER

- (1) Application at Exh. No. 34 and 35 are allowed subject to cost of Rs.3000/- payable by applicants to defendant.
- (2) Applicants shall deposit aforesaid cost amount on or before next date.
- (3) In case of failure to pay/deposit cost amount within period given, suit will proceed further without bringing on record legal heirs of plaintiff No.2.
- (4) After depositing/paying cost amount applicant shall carry out necessary amendment in the plaint and shall supply amended copy on record.

Jaysingpur.
Dt.: 19.09.2018.

Sd/-
(**K.G.Sawant**)
Civil Judge Senior Division,
Jaysingpur.

3

**Regular Civil Suit No.307/2012.
CNR NO.: MHKO07-000922-2012.**

