

MHKO070010782007



REGULAR CIVIL SUIT No. 174 / 2007
Mumtaz Syed Vs. Roshanbee Shaikh and oth.
COMMON ORDER BELOW EXH. 125 and 126
(I/A No. 1/2024 and 2/2024)

Vide these applications, plaintiff is requesting for bringing on record LRs of deceased defendant No. 5 and condonation of delay for the cause. Notices were served on LRs. Nos. 5-A to 5-D as per report at Exh. 127 and 128, but they failed to appear.

2- Perused application. Also perused record and proceeding. Heard learned Advocate for plaintiff.

3- As per record defendant No. 5 expired on 05.05.2012 and this application is filed on 29.03.2023, and as such there is huge delay of about 11 years for the cause.

4- It is contended by learned Advocate for plaintiff that initially suit proceeded exparte against defendant No. 5 ; however after the lockdown due to COVID 2019 and its aftermath plaintiff searched for whereabouts of all the parties of the suit ; at that point of time she come to know about death of defendant No. 5 ; thereafter she has to obtain relevant documents as well as search for LRs of deceased defendant No. 5 ; and as such said delay was caused.

5- As discussed earlier, notices were sent to LRs but they did not appear in the matter. This application is moved on

affidavit. Record shows that suit proceeded ex parte against defendant No. 5. Said aspect corroborates version of plaintiff. Also there is nothing on record to disbelieve plaintiff. The suit is for partition and separate possession, and it is clear that right to sue survive against deceased defendant No. 5. Thus following order.

ORDER

1. Applications are allowed.
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. 5.
4. This original order be kept below Exh. 126.
5. Cost to be in the cause.

Place - Jaysingpur.
Date - 10.05.2024

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