

MHKO090001382011

**ORDER BELOW EXH. 84 IN REG. CIVIL SUIT NO. 64/2011**

1. This application is filed for bringing legal representatives of plaintiff No. 17 on record by setting aside abatement. Plaintiff No. 17 died on 07.01.2020. Within 90 days, her legal heirs had to be brought on record. That means till 07.04.2020, the plaintiffs were having time to move necessary application Under 22 of the Code of Civil Procedure. It is necessary to mention here that from March 2020, the nationwide lock-down was announced. Till September 2021, functioning of the court was not regular. This application is filed in the month of April 2021. Hence, considering reasons mentioned in the application and nature of the suit, I find that delay can be condoned and abatement can be set aside.
2. As per order below Exh. 83, the delay is already condoned. No substantial objection is raised regarding names of legal heirs given in the application. The only objection raised in say is that death certificate is not placed on record. It is not mandatory for the plaintiff for file death certificate of the deceased. What Order 22 of the Code of Civil Procedure that cause of action must survive on the legal representation on death of the plaintiff / defendant. Similarly, the plaintiff has to show that either the plaintiff or defendant died, the death certificated if filed by abundant caution to prove the death of the party. Death certificate is not the only

evidence by which the death can be proved. By filing affidavit also, the plaintiff can show that one of the parties to the suit died. Therefore, for non filing of death certificate, the court cannot infer that death is not cause and the application is liable to be rejected. The Court has to see and get itself satisfied that one of the parties to the suit is died and if this fact is proved by the affidavit, the Court rely upon it. The insistence of death certificate is only to ascertain date of death, so that the court will be in position to compute period of limitation and to see, whether any abatement is occurred or not. Now, abatement is already set aside by me. It is not the case of defendants that date of death given in the application is wrong and the real date is something different. Therefore, this application is not having any force and accordingly, I pass the following order-

ORDER

1. Application Exh. 84 is allowed.
2. The plaintiffs are permitted to bring legal representatives of plaintiff No. 17.
3. The amendment shall be carried out within 14 days from the date of this order and amended plaint with its copies shall also be filed within same period.

Date : 23.03.2022

(G. V. Deshpande)
Civil Judge Senior Division,
Gadhinglaj