



R.C.S.No.39/2018
Indira V/s Jayavant
CNR No.:MHKO100002222018

ORDER BELOW EXH. NO.39

This is an application moved by plaintiffs to condone delay caused to set aside order of abatement against defendant no.2 and to set aside order of abatement against defendant no.2.

2. Plaintiffs averred that, defendant No.2 died on 21-07-2019. Plaintiffs were unable to approach the court to set aside abatement order against defendant no.2 within limitation. The suit filed for partition and perpetual injunction. The right to sue survives to legal representatives of defendant no.2. Therefore, delay caused to set aside the abatement order against defendant no.2 needs to be condoned and abatement order against defendant no.2 needs to be set aside. Hence, this application.

3. Perused the say filed by defendants. Defendants contended that, the contents of the present application are false and groundless. Hence, the application is liable to be rejected.

4. I have heard learned advocates for both sides.

5. I have perused the present application, say filed by defendants and the death certificate of defendant no.2 at

Exh.45. Reportedly, defendant no.2 died on 21-07-2019. The application is filed on 20-02-2020. The delay was caused to set aside the abatement order against defendant no.2. The application is supported by an affidavit stating therein the reason for delay. It appears that plaintiffs had sufficient cause which prevented him from making an application.

6. The suit filed for partition and perpetual injunction. The right to sue survives to legal representatives of defendant no.2. The delay caused to bring the legal representatives of deceased defendant no.2 can be compensated in terms of money therefore, it is proper to impose costs on plaintiffs. Hence, I pass following order -

ORDER

1. The application is allowed.
2. The delay caused to set aside the abatement order against defendant no.2 is condoned subject to costs of Rs.200/- (Rs.Two Hundred only) to be deposited by plaintiffs in the court on or before next date failing which the application shall stand rejected automatically.
3. The abatement order against defendant no.2 is set aside subject to costs of Rs.200/- (Rs.Two Hundred only) to be deposited by plaintiffs in the court on or before next date failing which the application shall stand rejected automatically.
4. Defendants are at liberty to withdraw the cost of Rs.400/- (Rs.Four Hundred only) deposited by plaintiffs.

Date : 15-03-2021

(Ms B.A.Durgawade)
2nd Jt.C.J.J.D.,Gadhinglaj

Certificate

I affirm that the contents of this PDF file Judgment/order are same, word to word, as per the original Judgment/order.

Name of the Stenographer	Shri. G.S.Shinge
Court	2 nd Jt.C.J.J.D. & J.M.F.C., Gadhinglaj
Date	15-03-2021
order signed by the P.O. on	15-03-2021
order uploaded on	15-03-2021