

MHKO110004522017



Reg.Civil Suit No.55/2017

(CNR No.MHKO110004522017)

Common Order below Exh.32, 19 and 20

1. These applications are filed by the plaintiffs for condonation of delay, setting aside abatement order and bringing the legal representatives of deceased defendant No.24 - Shivaji Nilkanth Suryawanshi on record.

2. It is contended by the plaintiffs in **Exh.32** i.e. application for condonation of delay for taking the legal representatives of deceased defendant No.24 on record that, defendant No.24 - Shivaji Nilkanth Suryawanshi was died on 14/02/2013. The plaintiffs further submitted that, they have got knowledge about the death of defendant No.24 after receiving bailiff report and they have not received death certificate of deceased Shivaji Nilkanth Suryawanshi within time and also they have no knowledge about the address of legal representatives of deceased defendant No.24 and due to it, delay of 6 months 15 days was caused for filing the application. It is also submitted that, they have not deliberately caused delay. It is further submitted that, in the interest of justice, the delay occurred may be condoned, presence of legal representatives of deceased is necessary and hence the application be allowed.

3. It is contended by the plaintiffs in **Exh.19** i.e. application for setting aside abatement that, the defendant defendant No.24 - Shivaji Nilkanth Suryawanshi was died on 14/02/2013. It is further submitted to

set aside abatement order in the interest of justice. Therefore the said abatement be set aside.

4. It is contended by the plaintiffs in **Exh.20** i.e. application for taking legal representatives of deceased defendant No.24 - Shivaji Nilkanth Suryawanshi on record that, the legal representatives namely (1) Smt. Shila Shivaji Suryawanshi (2) Shri. Vijay Shivaji Suryawanshi (3) Shri. Ravi Shivaji Suryawanshi are legal heirs of deceased defendant No.24 - Shivaji Nilkanth Suryawanshi. It is further submitted that, in the interest of justice, presence of legal representatives of deceased defendant No.24 is necessary and hence the application be allowed.

5. The say of defendants was called. However they failed to file their say. Hence application proceeded without say of defendants.

6. Perused record. Heard. According to the plaintiffs, they have got knowledge about the death of defendant No.24 after receiving bailiff report and they have not received death certificate of deceased Shivaji Nilkanth Suryawanshi within time and they have no knowledge about the address of legal representatives of deceased defendant No.24 and due to it, delay of 6 months 15 days was caused for filing the applications. Therefore they could not file these applications within limitation period of 90 days and therefore could not bring the legal representatives of deceased defendant No.24 - Shivaji Nilkanth Suryawanshi within time by filing the application/s.

7. The suit is filed by the plaintiffs for removing encroachment against the defendants. Thus it is observed that, in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved, it is necessary to allow the applications to bring the legal representatives of defendant No.24 - Shivaji Nilkanth

Suryawanshi on record. However for causing delay subject to imposing reasonable costs. With this I proceed to pass the following order -

ORDER

- 1) The applications at **Exh.32, 19 and 20** are hereby allowed, subject to costs of Rs.300/- (Rs. Three Hundred), it be paid to the Legal Aid.
- 2) The abatement is hereby set aside.
- 3) The delay of 6 months 15 days occurred in bringing the legal heirs of defendant No.24 - Shivaji Nilkanth Suryawanshi on record is hereby condoned.
- 4) The plaintiffs are hereby permitted to bring legal representatives of defendant No.24 - Shivaji Nilkanth Suryawanshi on record and directed to carry out necessary amendment in the plaint and file amended copy of the plaint accordingly.

Date : 01/01/2020
Peth-Vadgaon

(J. S. Gaikwad)
Civil Judge Jr.Dn., Peth-Vadgaon

I affirm that, the contents of the P.D.F. file order are same, word to word, as per the original order.

Name of the Stenographer	Sou.K.S.Gaikwad
Name of the Court	J.S.Gaikwad, Civil Judge Junior Division, Peth-Vadgaon
Date of Dictation	01/01/2020
Order signed by the P.O. on	02/01/2020
Order uploaded on	02/01/2020