

MHKO110004522017



**Reg.Civil Suit No.55/2017**

(CNR No.MHKO110004522017)

**Common Order below Exh.29, 30 and 31**

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.3 – Sukhadev Krushna Naik and defendant No.23 – Balkrushna Nilkanth Suryawanshi on record.

2. It is contended by the plaintiffs in **Exh.29** i.e. application for taking legal representatives of deceased defendant No.3 – Sukhadev Krushna Naik and defendant No.23 - Balkrushna Nilkanth Suryawanshi on record that, the legal representatives namely (1) Suresh Sukhadev Naik (2) Ramesh Sukhadev Naik (3) Shobha Mahadeo Pandhare (4) Bharati Kiran Shirgave are legal heirs of deceased defendant No.3 - Sukhadev Krushna Naik. It is further submitted that, the legal representatives namely (1) Ambubai Balkrushna Suryawanshi (2) Chandrakant Balkrushna Suryawanshi (3) Dhanaji Balkrushna Suryawanshi (4) Chandrabhaga Ashok Desai (5) Suvarna Suresh Bedekar are legal heirs of deceased defendant No.23 - Balkrushna Nilkanth Suryawanshi. It is further submitted that, in the interest of justice, presence of legal representatives of deceased defendant No.3 and 23 is necessary and hence the application be allowed.

3. It is contended by the plaintiffs in **Exh.30** i.e. application for setting aside abatement that, the defendant No.23 - Balkrushna

Nilkanth Suryawanshi was died on 16/01/2018. It is further submitted to set aside abatement order in the interest of justice.

4. It is contended by the plaintiffs in **Exh.31** i.e. application for condonation of delay for taking the legal representatives of deceased defendant No.23 on record that, defendant No.23 - Balkrushna Nilkanth Suryawanshi was died on 16/01/2018. The plaintiffs further submitted that, they have not received death certificate of deceased defendant No.23 within time and they have no knowledge about the address of legal representatives of deceased defendant No.23 and due to it, delay of 3 months 8 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.

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

6. Perused record. Heard. According to the plaintiffs, they have not received death certificate of deceased defendant No.23 within time and they have no knowledge about the address of legal representatives of deceased defendant No.23 and due to it, delay of 3 months 8 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.23 - Balkrushna 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.3 – Sukhadev Krushna Naik and defendant No.23 - Balkrushna 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.29, 30 and 31** are hereby allowed, subject to costs of Rs.200/- (Rs. Two Hundred), it be paid to the Legal Aid.
- 2) The abatement is hereby set aside.
- 3) The delay of 3 months 8 days occurred in bringing the legal heirs of defendant No.23 – Balkrushna Nilkanth Suryawanshi on record is hereby condoned.
- 4) The plaintiffs are hereby permitted to bring legal representative of defendant No.3 – Sukhadev Krushna Naik and defendant No.23 – Balkrushna 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