

**ORDER BELOW EXH.81.**

This is an application filed by the plaintiff to bring on record defendant no.05's legal heirs by canceling order of abatement.

02. The plaintiffs submitted that the present suit has been filed for partition and declaration against defendants which is pending before this court. The defendant no.05 Remetin Benjamin Disoza, died on 29/05/2018. The names of heirs of defendant has been mentioned in application below Exh.83.

03. It is further submitted by plaintiffs that after the death of defendant no.05, the plaintiff no.1 was suffering from diabetes and B.P. and he was under treatment of Dr. Shailesh Mane. Hence, they failed to brought the legal heirs on record within 90 days and the order of abatement has been passed. Therefore, the same is liable to be cancelled. Moreover, it is submitted by the plaintiff that the suit is related to the heirs of the defendant no.05, hence the heirs of defendant should be brought on record. Finally, plaintiffs prayed for allowing the application by setting aside the abatement order.

04. Opponent filed their say and contended that, the reasons are not convincing. Moreover, the plaintiff no.1 did not file the medical certificate. Therefore, the applications may be rejected.

05. Perused the record and application and say filed on record. Heard the both learned advocates.

06. Perusal of record shows that the defendant no.05, is died on 29/05/2018 and the application is filed on 03/12/2019. The application has to be filed within 90 days, therefore, the delay of 1 year, 4 months and 16 days is caused. The reasons for the applications are well-founded. Moreover, it is well-settled that liberal view is required to be taken while deciding applications for setting-aside abatement. In the circumstances, the applications below Exh.81, will have to be allowed. Hence, I pass following order,

**ORDER**

1. The application Exh.81 is allowed.
2. The abatement order is hereby set aside.

Place : Garogti  
Date : 28/02/2020.

( A. S. Koshti )  
Civil Judge Junior Division, Gargoti.