

**ORDER BELOW EXH. 122 IN R.C.S. NO. 08/2008**

Krupa Maruti Hallikar Vs. Benjamin Tatoba Dhupdale, etc.

This is a suit for partition, possession and perpetual injunction. By this application, the plaintiff prayed to condone delay, caused in filing the application seeking setting aside of deemed abatement order supposedly passed on account of death of defendant No. 6 and because of non bringing his L.Rs. on record. In the application it is contended that, during pendency of the suit defendant No. 6 passed away, however, as the plaintiff was sick and further, she could not get information about L.Rs. of the deceased defendant No. 6, she could not file the application for bringing L.Rs. of defendant No. 6 on record within stipulated time. According to plaintiff, the delay caused therefor is not deliberate but because of the above said ground. According to her, considering nature of the suit permission is required to be given to the plaintiff to bring L.Rs. of deceased defendant No. 6 on record, otherwise, she will suffer a heavy and irreparable loss. Thus, prayed accordingly. The application is supported with affidavit of plaintiff.

2. The application is strongly apposed and contested by the defendant No. 1 by filing his say overleaf. The defendant No. 1 has contended that, there is abnormal and inordinate delay in filing this application and in bringing L.Rs. of deceased No. 6 on record the reasons mentioned in the application are not true and satisfactory and not supported with any document. Thus, he prayed to reject the application. Despite opportunity was granted, the remaining defendants failed to file their say to the application. Hence, hearing of the application proceeded in absence of their say.

3. Heard, Shri. R.P. Bandivdekar, the ld. Advocate for the plaintiff and Shri. V.B. Kadukar, the ld. Advocate for the defendant No. 1.

4. It is a matter of record that, defendant No. 6 died on 03/04/2017 and the plaintiff was required to bring L.Rs. of deceased defendant No. 6 on record within 90 days from the date of death of defendant No. 6 which comes to 01/07/2017. That, after expiry of the said period of 90 days, the plaintiff have got an opportunity to file an application for setting aside of deemed abatement order, within 60 days from the date of expiry of the above period of 90 days. As such, the application for setting aside of abatement order was to be filed on or before 30/08/2017. The application in hand is filed on 09/07/2018 which is belated. There is a delay of about one year in filing the said application. However, the loss caused to the defendants by filing the said application with delay can be compensated by awarding costs to the defendant No. 1. Considering the nature of the suit, presence of L.Rs. of deceased defendant No. 6 is essentially necessary. Thus, I am inclined to grant the application subject to costs. Hence, following order.

ORDER

The application below Exh. 122 is allowed in following terms.

After the plaintiff pays costs of Rs. 500/- to the defendant No. 1, delay caused in setting aside deemed abatement order supposedly passed on account of death of defendant No. 6 shall stand condoned.

Payment of costs shall be condition precedent.

Parties to note.

Date : 15.10.2019.

(Amrit C. Birajdar)
Civil Judge, Jr.Dn., Chandgad.

CERTIFICATE

I affirm that the contents of this P. D. F. file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of the Stenographer	Shri. V.G. Kamble, L. G. Stenographer.
Name of Court	Shri. A. C. Birajdar, Civil Judge, Junior Division and Judicial Magistrate, First Class, Chandgad.
Date of Dictation	15/10/2019
order signed by the P. O. on	15/10/2019
order uploaded on	16/10/2019