

**ORDER BELOW EXH. 68 IN R.C.S. NO. 28/2005**

Sajubai Shankar Phatak, etc.. Vs. Gundu Dadu Phatak, etc.

This is a suit for partition and separate possession. By this application filed at Exh. 68, plaintiffs have 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. 1 namely, Gundu Dadu Phatak. In the application it is contended that, defendant No. 1 namely, Gundu Dadu Phatak died on 30/03/2021. Due to sudden death of defendant No. 1, plaintiffs could not file application in this matter to bring L.Rs. of deceased defendant No. 1 in the proceedings as, within stipulated time. Moreover, in the meantime, there was Nationwide lockdown because of covid pandemic and no transport facilities were available and consequently, the plaintiffs could not collect material information and documents. According to applicants, the delay caused is not deliberate. According to them, considering nature of the suit permission is required to be given to the plaintiffs to add L.Rs. of deceased defendant No. 1 on record, otherwise, they will suffer a heavy and irreparable loss. Thus, prayed accordingly. The application is supported with affidavit of plaintiff NO. 1.

2. The application is strongly objected and contested by the defendants by filing his say behind the application.

3. Heard, Shri. R.P. Bandivadekar, the ld. Advocate for the plaintiffs and Shri. V.R. Patil, the ld. Advocate for the defendants.

4. It is a matter of record that, defendant No. 1 died on 30/03/2021 and the plaintiffs were required to bring L.Rs. of deceased plaintiff on record within 90 days from the date of death of defendant No. 1 which comes to 28/06/2021. That, even thereafter also, within the period of

60 days, the plaintiffs could have brought L.Rs. of deceased defendant No. 1 on record by applying for setting aside of deemed abatement order. However, nothing is done by the plaintiffs within the said time limit. It is a judicially noticeable thing that, in the meantime really there was a Nationwide lockdown because of covid pandemic and all the affairs of the country were badly affected. Transport facilities were also not working up to the mark and as usual. Thus, I found the ground mentioned in the application to be justifiable and satisfactory. As such, the delay is bonafied, and the same is required to be condoned. Question of costs does not arise. Hence, following order.

**ORDER**

The application below Exh. 68 is allowed.

Delay caused in filing the application for setting aside the deemed abatement order supposedly passed on account of death of deceased defendant No. 1 is hereby condoned.

No order as to costs.

Parties to note.

Date : 25/03/2022

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