


<p>MHKO160004402017</p> 	<p><u>Common Order below Exh.52,57,58</u> <u>in R.C.S.No.85/2017</u></p>
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1) Present application is made for setting aside abatement order passed against plaintiff. Plaintiff died after the institution of present suit on 24/10/2022. Smt. Aakubai Ananda Dalvi, Smt. Sunanda Sampat Magdum, Shri. Balu Ananda Dalvi, Shri. Shamrao Ananda Dalvi are the legal heirs of deceased plaintiff. There are no other legal heirs of the plaintiff. Hence present application made for taking the legal heirs of the plaintiff on record .

2) It is further contended that the plaintiff died on 24/10/2022 but the delay of 2 days was caused for taking the legal heirs on record. But as per the law plaintiff has to file the application within 3 months from the death of deceased Ananda Vithu Dalvi. The delay for filing the present application is not made deliberately but to decide the matter on merit it is necessary to amend the suit, and to take the legal representatives on record. Therefore, present application is made for the condoning the delay and setting aside abatement order.

3) Defendant failed to file his say on present application even after sufficient opportunity is given. Hence present application is decided without say of defendant.

4) Heard the Ld. Advocate for the plaintiff. Perused the record. However, perusal of record, it reveals that the plaintiff filed present suit for the declaration and perpetual injunction. The cause of delay is supported by affidavit of plaintiff.

5) As per Art 120 of the Limitation Act prescribes Limitation of 90 days for bringing legal heirs and representatives of the deceased

party. It is necessary to hear and decide the rights of legal heirs of plaintiff.

6) In order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit and to hear & decide present suit the abatement order passed against the plaintiff need to be set aside. It is necessary to allow the application to bring on record the legal representatives of the deceased plaintiff. But as per the law of limitation plaintiff has to file the application for taking on record legal representative within 90 days. But the delay of 2 days was caused for taking on record the legal heirs of plaintiff. On perusing record it reveals that there are no other heirs of deceased plaintiff except named in the application.

7) Hence, It is desirable to allow plaintiffs to bring legal heirs of deceased defendant no.1 on record. As such, I pass following order :

ORDER

1. The application is hereby allowed.
2. The delay of 2 days is condoned by setting aside the order of abatement of suit by imposing cost of Rs. 200/.
3. Legal heirs of deceased plaintiff be taken on record within one month from the date of order.

Sd/-

Place : Shahuwadi

(Shraddha Dinkar Bagal)

Date : 09.01.2024.

Jt. Civil Judge Junior Division,

Malkapur-Shahuwadi