

MHKO170000172023

**Regular Civil Suit No.3/2023**

Shantabai Mahadev Patil etc

Vs.

Dilip Shripati Salokhe etc

COMMON ORDER BELOW EXH. 41,41 and 42

These are applications filed by the plaintiffs for setting aside abatement, condonation of delay, and bringing the Lrs of deceased defendant No. 4(2) Sangram Vasant Salokhe on the record. According to the plaintiff it is contended in Exh.40 i.e. application for setting aside abatement that the defendant No. 4(2) died on 14.03.2023. It is submitted that due to no knowledge about the death of defendant No. 4(2) they failed to take necessary steps in respect of the deceased defendant No. 4(2). Therefore, the court has passed the order of abatement. Now the plaintiffs have received the documents about the death of the defendant No. 4(2) . It is necessary to set aside abatement order regarding the defendant No. 4(2) in the interest of justice. Therefore the said abatement be set aside. It is further submitted in Exh.41 i.e. application for condonation of delay for taking the legal representatives of deceased defendant No.4(2) on record that, they have no knowledge of about the death of defendant No. 4(2) and occurred due to non availability of death certificate of defendant No.4(2).

The plaintiffs had not intentionally delayed the case proceedings. It is further submitted that in the interest of justice the delay occurred may be condoned. It is further submitted in Exh.42 i.e. application for taking the legal representatives of deceased defendant No. 4(2) on record . They are the only legal heirs of deceased defendant No. 4(2). It is further submitted that in the interest of justice, presence of Lrs of deceased is necessary and hence the applications be allowed.

2. The say of Advocate for defendants was called on all these applications. They have filed their say and resists the applications. Therefore, prayed for rejection of the applications. If the application come to conclusion for allowed heavy cost of Rs. 2000/- be imposed upon plaintiff.

3. Considered rival submissions made by both parties. Perused record. Heard learned counsel for both parties. On perusal of documents. According to the plaintiff, the defendant No.4(2) died on 14.03.2023 and due to non availability of death certificate of defendant No. 4(2) they could not file these applications within limitation period of 90 days and therefore could not bring the LRs of deceased defendant No.4(2) within time by filing, the applications. The suit is filed by the plaintiffs for the declaration

and injunction 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 on record the legal representatives of deceased defendant No. 4(2) Sangram Vasant Salokhe on record. However in convenience caused to the defendants can be compensated by imposing costs. With this I proceed to pass the following order.

Order

- 1 The applications Exh. 40,41 and 42 are hereby allowed.
- 2 The abatement is hereby set aside.
- 3 The delay occurred of 1 years 4 months is hereby condoned subject to cost of Rs.500/- to be paid to defendant.
- 4 The necessary amendment be carried out in the plaint on next date.

Date 16.01.2025.

Smt. V.R.Mane,
Civil Judge, Jr.Dn. Panhala.