



ORDER BELOW EXH.29 IN R.C.S. NO.52/2021
(Mohammad Tayyab Patel and Anr. v. Saheblal Patel
and Ors.)

Plaintiff No.1 has filed present application for setting aside abatement order and condonation of delay caused in bringing on record legal heirs of deceased plaintiff No.2(A).

02. Learned advocate Shri. K.C.Shirguppe for defendant No.1 has strongly resisted present application by filing his say on overleaf of present application. In spite of ample opportunities being given defendant Nos.2 and 3 failed to file their say on present application. Hence, present application is hereby decided on merit without say of defendant Nos.2 and 3.

03. Heard learned advocates for plaintiff No.1 and defendant No.1, at length. Arguments are set forth in consonance of their pleadings.

04. On perusal of record and proceeding, it appears that, plaintiff No.2(A) has died on 23.10.2022. Plaintiff No.1 should have brought on record legal heirs of deceased plaintiff No.2(A) within stipulated period of time. However, plaintiff No.1 failed to do so. Hence, the suit came to be abated against plaintiff No.2(A) as per law. However, considering reasons mentioned in the application and submissions of learned advocate for plaintiff No.1 it shows that, due to unavoidable circumstances plaintiff No.1 could not bring on record legal heirs of deceased plaintiff No.2(A) within period of limitation. There is nothing on record which indicate that, delay caused by plaintiff No.1 in bringing on record legal heirs of plaintiff No.2(A) is deliberate. Hence, in view of contentions and submissions of both parties as well as considering the nature of the suit and controversy between both parties, I am of the considered opinion that, there was a sufficient cause for plaintiff No.1 for not taking steps for bringing on record legal heirs of deceased plaintiff No.2(A) within period of limitation. Apart from this, the

suit has to be decided on merit and for that purpose, it is necessary to bring on record legal heirs of deceased plaintiff No.2(A). Moreover, by allowing present application, no prejudice will be caused to defendants. Therefore, considering above facts and circumstances, it is just and proper to allow present application subject to cost. Considering age of the suit and delay caused by plaintiff No.1, it is just and proper to impose cost of Rs.500/- on plaintiff No.1 while allowing present application. Resultantly, I pass following order :-

:: ORDER ::

1. Application (Exh.29) is hereby allowed subject to costs of Rs. 500/- (Rupees Five Hundred Only) payable to defendant No.1.
2. Abatement order passed against plaintiff No.2(A) is hereby set aside.
3. Delay caused in bringing on record legal heirs of deceased plaintiff No.2(A) is hereby condoned.
4. Payment of cost shall be condition precedent for condonation of delay caused in bringing on record legal heirs of deceased plaintiff No.2(A).

(Dictated and pronounced in the Open Court).

Date: 23.10.2024.
Kurundwad.

(Balasaheb S. Gaikwad)
Civil Judge, Junior Division,
Kurundwad.