



**ORDER BELOW EXH.25 IN R.C.S. NO.52/2021**  
**(Mohammad Tayyab Patel and Anr. v. Saheblal Patel**  
**and Ors.)**

Plaintiffs have filed present application for setting aside abatement order and condonation of delay caused in bringing on record legal heirs of deceased defendant No.4.

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. In spite of service of notice, legal heirs of deceased defendant No.4 failed to appear in the suit and failed to file their say on present application. Hence, present application proceeded ex-parte against legal heirs of deceased defendant No.4.

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

05. On perusal of record and proceeding, it appears that, defendant No.4 has died on 03.12.2021. Plaintiffs should have brought on record legal heirs of deceased defendant No.4 within stipulated period of time. However, plaintiffs failed to do so. Hence, the suit came to be abated against defendant No.4 as per law. However, considering reasons mentioned in the application and submissions of learned advocate for plaintiffs it shows that, due to unavoidable circumstances plaintiffs could not bring on record legal heirs of deceased defendant No.4 within period of limitation. There is nothing on record which indicate that, delay caused by plaintiffs in bringing on record legal heirs of defendant No.4 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 plaintiffs for not taking steps for bringing on record legal heirs of deceased defendant No.4 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 defendant No.4. 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 plaintiffs, it is just and proper to impose cost of Rs.500/- on plaintiffs while allowing present application. Resultantly, I pass following order :-

**:: ORDER ::**

1. Application (Exh.25) is hereby allowed subject to costs of Rs. 500/- (Rupees Five Hundred Only) payable to defendant No.1.
2. Abatement order passed against defendant No.4 is hereby set aside.
3. Delay caused in bringing on record legal heirs of deceased defendant No.4 is hereby condoned.
4. Payment of cost shall be condition precedent for condonation of delay caused in bringing on record legal heirs of deceased defendant No.4.

(Dictated and pronounced in the Open Court).

Date: 23.10.2024.  
Kurundwad.

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