



ORDER BELOW EXH.59 IN R.C.S. NO.218/2014
[Aappasaheb Gangaram Mahar (Waghmare) and Ors. v.
Babsaheb Krushnarao Pol (deceased) through LRs.]

Plaintiffs have filed present application for setting aside abatement order passed against plaintiff No.1.

02. Defendants have strongly resisted present application by filing their say on overleaf of present application contending that, say filed by them on overleaf of application (Exh.58) may be treated as their say on present application. They contended that, the application is devoid of merits. Hence, they prayed that, the application may be rejected with cost. They have alternatively contended that, if the Court comes to the conclusion to allow present application, heavy cost may be imposed upon applicants for delay caused by them in filing present application.

03. Heard learned advocates for both parties, at length. Arguments are set forth in consonance of their pleadings.

04. On perusal of record and proceeding, it appears that, plaintiff No.1 has died on 12.08.2018. Plaintiffs should have brought on record legal heirs of deceased plaintiff No.1 within stipulated period of time. However, plaintiffs failed to do so. Hence, the suit came to be abated against plaintiff No.1 as per law. Thereafter, plaintiffs have filed present application on 04.09.2024. 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 plaintiff No.1 within period of limitation. There is nothing on record which indicate that, delay caused by plaintiffs in bringing on record legal heirs of plaintiff No.1 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 plaintiff No.1 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.1. Furthermore, 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.1,500/- on plaintiffs while allowing present application. Resultantly, I pass following order :-

:: ORDER ::

1. Application (Exh.59) is hereby allowed subject to total costs of Rs.1,500/- (Rupees One Thousand Five Hundred Only) which shall be payable to defendants.
2. Abatement order passed against deceased plaintiff No.1 is hereby set aside.
3. Payment of cost shall be condition precedent for setting aside abatement order passed against plaintiff No.1.

(Dictated and pronounced in the Open Court).

Date : 24.09.2025.

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