



ORDER BELOW EXH.28 IN R.C.S. NO.268/2017  
[Mahaveer Benichtage v. Chavgonda Patil and Ors.]

The plaintiff has filed present application for setting aside abatement order passed against defendant No.3.

02. Defendant Nos.1, 2, 4 to 8 have strongly resisted present application by filing their say on overleaf of present application. They contended that, the application is devoid of merits. Hence, they prayed that, the application may be rejected with heavy cost. They alternatively contended that, if the Court comes to the conclusion to allow present application, heavy cost may be imposed upon the plaintiff while allowing present application.

03. In spite of service of notice, legal heirs of defendant No.3 failed to appear and file their say on present application. Hence, present application proceeded ex-parte against legal heirs of defendant No.3.

04. Heard learned advocates for the plaintiff and defendant Nos.1, 2, 4 to 8, at length. Arguments are set-forth in consonance of their pleadings.

05. On perusal of record and proceeding, it appears that, defendant No.3 has died on 19.03.2024. The plaintiff should have brought on record legal heirs of deceased defendant No.3 within stipulated period of time. However, the plaintiff failed to do so. Hence, the suit came to be abated against defendant No.3 as per law. Thereafter, the plaintiff has filed present application on 06.12.2024. Considering reasons mentioned in the application and submissions of learned advocate for the plaintiff, it shows that, due to unavoidable circumstances the plaintiff could not bring on record legal heirs of deceased defendant No.3 within period of limitation. There is nothing on record which indicates that, delay caused by the plaintiff in bringing on record legal heirs of defendant No.3 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 the plaintiff for not taking steps for bringing on record legal heirs of deceased defendant No.3 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.3. 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 the plaintiff, it is just and proper to impose cost of Rs.300/- on the plaintiff while allowing present application. Resultantly, I pass following order :-

**:: ORDER ::**

1. Application (Exh.28) is hereby allowed subject to total costs of Rs.300/- (Rupees Three Hundred Only) which shall be payable to defendant Nos.1, 2, 4 to 8.
2. Abatement order passed against deceased defendant No.3 is hereby set aside.
3. Payment of cost shall be condition precedent for setting aside abatement order passed against defendant No.3.

(Dictated and pronounced in the Open Court).

Date : 16.01.2026.

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