



**Order Passed below Exh.106 in R.C.S.No.188/2017**

This is an application made for setting aside abatement of suit with regard to deceased defendant No.3 Balwant Dhondi Desai. It is contended that the Balwant Dhondi Desai is died on 04-04-2020. However, the plaintiff recently came to know about death of defendant No.3 and she applied for obtaining death certificate. She received death certificate on 29-10-2020. Likewise, due to pandemic situation, lock down was declared in whole nation. Therefore, legal representatives of deceased plaintiff could not bring on record within limitation. Ultimately, it is prayed that abatement of suit with regard to deceased defendant No.3 Balwant Dhondi Desai may be set aside.

02. The defendants have filed their say on overleaf of the application and contended that limitation for bringing legal representatives of deceased defendant No.3 is already over. As such, suit is abated against defendant No.3. The reason mentioned for condonation of delay, is not satisfactory. For making present application 55 days delay is caused. Therefore, this application may be rejected. Alternatively, it is prayed

that if application is allowed, Rs.3000/- cost may be imposed. .

03. Heard both sides. Perused record it appears that defendant No.3 Balwant Dhondi Desai is died on 04-04-2020. His death certificate is produced on record. The suit is instituted for partition. The application for condonation of delay (Exh.105) is allowed. Considering nature of suit i.e. partition it is necessary to set aside abatement of deceased defendant No.3 as right to sue has survived. Hence, following order.

**Order.**

1. Application is allowed without cost.
2. The abatement of suit against deceased defendant No.3 is set aside.

Kale-Kheriwade.

Dated-09-06-2022

(N.K.Nagargoje)

Civil Judge Jr. Dn.,Kale-Kheriwade.