

**Order below Ex. 27 & 29 in R.C.S. NO. 46/2019**(Passed on this 02<sup>nd</sup> day of September 2021 )**Ramchandra & Ors Vrs. Tukaram & ors.****CNR NO.MHLA060001472019**

01] The application at (Exh. 27) is filed by the plaintiffs for condonation of delay for brings legal heirs of deceased defendant No. 01 namely Tukaram S/o Nagorao Ghodke on record *vide* section 5 of the Indian Limitation Act 1963 and for setting aside abatement of suit *vide* Order XXII Rule 9 of the Code of Civil Procedure (Hereinafter refer as CPC), whereas application at (Exh. 27) for brings legal heirs of late defendant No.01 on record under Order XXII Rule 3 of the CPC. He has also prayed for the permission to make consequential amendment *vide* Order VI Rule 17 of the C.P.C. in respect of order on below (Exh. 27) and (Exh. 29).

02] The defendants have to filed their say and resist the applications on the ground that, there is no sufficient reason given by defendants for delay of filing applications. Plaintiffs have filed this applications after delay . In order to trouble the defendants, they could not file this applications within stipulated time. Ultimately, he prayed reject the applications. Perused the applications, affidavits and the record. Heard Ld. Advocate of plaintiffs and defendants.

03] The Tukaram S/o Nagorao Ghodke (defendant No.01) passed away on 21.09.2021. However, there is slight delay to making present applications. Plaintiffs contended that, they have failed to filed applications with in stipulated time, due lack of the knowledge and due to Covid-19 pandemic situation. Therefore, there is delay in bring the legal heirs of defendant No.01 on record. The delay is not II<sup>nd</sup> Jt.C.J.J.D.

intentional. Hence, he has prayed for condon the delay, setting aside abatement and permission to brings legal heirs of deceased defendant No.01 on record.

04] It reveals that, there is no sufficient reason for causing delay to making applications. There is no documentary evidence on record. The suit is for partition and separate possession in respect of suit property. And as the cause of action survives, the as legal heirs of deceased defendant No.01. Therefore, legal heirs of defendant No.01 are already on record, but daughter is need to brings on reored in order to avoid multiplicity of proceedings and to decide the controversy between parties at once on merit. The delay, though seems deliberate and inordinate. No prejudice is likely to cause to defendants, if these applications are allowed. Therefore, it is just and proper to allow these applications. Accordingly, I proceed to pass following order;

**:-ORDER:-**

1. Applications at (Exh. 27) and (Exh. 29) are hereby allowed.
2. The delay in making application at (Exh. 29) is hereby condoned with setting aside the automatic abatement the suit.
3. The plaintiffs are hereby directed to brings legal heirs of the deceased Tukaram S/o Nagorao Ghodke (defendant No.01) in suit by making necessary amendments in the plaint and by filing amended copy of the plaint on or before next date

(Dictated and pronounced in open Court)

Place:-Ahmedpur.

Date:- 02.09.2021.

(**Shyam S.Tondchire**)

II<sup>nd</sup> Jt. Civil Judge (Jr.Div.,)

Ahmedpur.