

	<b>Order below Exh. Nos 69, 71 &amp; 73 in R.C.S. NO.</b> <b><u>277/2014</u></b> (Passed on this 27 <sup>th</sup> day of June 2022 ) <b><u>Ranjana &amp; Ant Vrs. Baburao &amp; ors.</u></b> <b>CNR NO.MHLA060008782014</b>
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**01]** The application at (**Exh. 69**) is filed by the plaintiffs for condonation of delay for brings legal heirs of deceased defendant No.02 namely Devidas S/o Pataloba Munde of record *vide* section 5 of the Indian Limitation Act 1963 and application below (**Exh.71**) 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. 73**) for brings legal heirs of late defendant No.02 on record under Order XXII Rule 3 of the CPC. They have also prayed for the permission to make consequential amendment in plaint *vide* Order VI Rule 17 of the C.P.C. in respect of order on below (**Exh. 69**), (**Exh.71**) and (**Exh. 73**).

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

**03]** The defendant No.02 namely Devidas S/o Pataloba Munde passed away on 14.04.2021. However, there is more delay  
III<sup>rd</sup> Jt.C.J.J.D.

to making present applications. plaintiffs have submitted that, they have failed to filed applications with in stipulated time, due lack of the knowledge about Lrs of late defendant No.02. Therefore, there is delay in bring the legal heirs of late defendant No.02 on record. The delay is not intentional. Hence, they have prayed for condon the delay, setting aside abatement and permission to brings legal heirs of deceased defendant No.02 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 encroachment and possession in respect of suit property. The cause of action is survives to the legal heirs of deceased defendant No.02. Therefore, legal heirs of defendant No.02 are need on record, 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 legal heir of defendant No.02 as well as other defendants of record, if these applications are allowed. No doubt there is inconvenience caused to the defendants, due to the huge delay caused by plaintiffs. It would be need to be compensated by imposing proper costs. Thus, it is just and proper to allow these applications. Accordingly, I proceed to pass following order;

**:-ORDER:-**

1. Applications at **(Exh.69)**, **(Exh.71)** and **(Exh.73)** are hereby allowed subject to costs of Rs.500/- (Only Five Hundred)

2. The delay in making application at **(Exh.71)** and **(Exh.73)** is hereby condoned with setting aside the automatic abatement the suit.

3. The Plaintiffs are hereby directed to brings legal heirs of the deceased in suit by making necessary amendment defendant No.02 namely Devidas S/o Pataloba Munde in the plaint and by filing amended copy of the plaint on or before next date

(Dictated and pronounced in open Court)

**Place:-**Ahmedpur.

**(Shyam S.Tondchire)**

**Date:-** 27.06.2022.

III<sup>rd</sup>Jt. Civil Judge (Jr.Div.)

Ahmedpur.