

Chandrakant Vs. Sulochana Chanbasappa Mahajan and other 5

MHLA090008432020



ORDER BELOW EXH. 58

This is an application for condonation of delay to take LR's of defendant No.1 on record. Defendant No.1 Sulochana is reported to have been died on 24/10/2023. Application to take LR's on record is filed on 03/04/2024 below **Exh. 50**. According to plaintiff, he could not file the application because he could not get death certificate of defendant No.1. Hence, prayed to allow the application.

2. Defendant No.4 has filed say overleaf and objected the application stating that delay of 1 year has occurred and prayed for heavy costs. Defendant No.2 has also filed say overleaf and contended that, plaintiff has not filed delay condonation application at the time when application to take LR's is filed. According to him, three applications i.e., delay condonation, setting aside abatement order and permission to take LR's on record applications must have been filed at the same time. Plaintiff cannot file single application to take LR's on record. Hence, prayed to reject the application.

3. Perused application and say. Heard both sides. Admittedly, defendant No.1 Sulochana has died on 24/10/2023. The application to bring legal heirs on record will have to be made within 90 days of death and on expiry of said 90 days, the proceedings stands abated. An application to set aside abatement must be made within 60 days of such

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abatement. In the case in hand, plaintiff merely filed application to take LR's on record without filing delay condonation application and application for setting aside abatement. Plaintiff should have filed an application to take LR's on record on or before 23/01/2024. Even then, he should have filed application for setting aside delay on or before 22/03/2024. However, application to take LR's on record is made on 03/04/2024. It means after 11 days when suit is abated against defendant No.1.

4. Plaintiff has filed on record copy of death certificate of defendant No.1. Record shows that, evidence of defendants is going on. LR's of defendant No.1 are duly served with notice as per report filed below **Exh. 54 and 57** but they failed to appear and raised any objection. Hence, in order to decide case on merits, delay caused to set aside abatement order needs to be set aside by awarding appropriate costs to the defendant No. 2 and 4 as both have them contested the application. In view of said reasons, I pass following order-

ORDER

1. Application is allowed.
2. Plaintiff to pay costs of Rs. 500/- to defendant No.2 and 4 each on or before next date. After payment, delay shall stand condoned.

Udgir.
Dt:- 11/02/2025.

(N.J.Chavan)
3rd Jt. C.J.J.D, Udgir.