

MHLA11-000424-2016

Order below application vide Exh.91
in Spl.C.S. No. 14/2016
Shashank Died Through LRs. Vs. Vijaykumar and Ors.

Perused contents of applications and say thereon. Heard to both sides. Perused record and proceeding. Learned advocates for the parties submitted contents of the applications and say thereon.

2. Defendant No.3 Virbhdrappa Murgeppa Shingare expired on 24/09/2019. He has legal heirs viz. 1. Vijaykumar Virbhadrapa Shingare, 2. Rekha Virbhadrapa Shingare, 3. Malati Suresh Murame and 4. Madhuri Virbhadrapa Shingare.

3. Plaintiff Shashank was suffering from jaundice since last many dates. On 05.07.2023, he expired. Heirs have been already brought on record. Information as to death of defendant No.3 Virbhdrappa could not be received and provided to advocate within time. Therefore, delay occurred for bringing the legal representatives of deceased defendant No.3 Virbhdrappa Murgeppa Shingare. The plaintiff lastly prayed to condone the alleged delay occurred for bringing the legal representatives of deceased defendant No.3 Virbhdrappa Murgeppa Shingare on record and setting aside abatement of the suit. The defendants and proposed parties contended that, reasons for delay are not proper. Therefore, the application may be rejected.

4. The present suit is for recovery of amount of Rs.11,00,000/-. Averment in the plaint, itself discloses that ancestral property viz. Land, House and Shop belongs to defendant No.1 is having in the name of defendant No.3. Father of the plaintiff sold land ad-measuring 90 R to one Rajendra Bandgar for consideration of Rs.12,81,000/-. Defendants No.1 and 2 were in financial need for expansion of their business. Therefore, the plaintiff time and again paid Rs.3,50,000/- to the defendants as hand loan out of the aforesaid consideration amount. Thereafter, defendants No.1 and 2 issued cheque in favour of the plaintiff towards the repayment, which has been dishonoured. The plaintiff lastly prayed to the recovery of an amount from the defendants along with interest. Defendants No.1 and 2 resisted the plaintiff's entire claim and lastly contended to dismiss the suit. Initially, the suit was proceeded further ex-parte against defendant No.3. At present legal heirs of defendant No.3 Virbhdrappa appeared through learned advocate Shri. U. S. Jadhav. Aforesaid legal heirs of deceased defendant No.3 Virbhdrappa. Neither the present defendants nor aforesaid legal heirs raised any dispute as to whether their liability is existed or not. More so, as discussed earlier the plaintiff alleges that, ancestral land, house and Shop belongs to defendant No.1 is having in the name of defendant No.3. So also, the plaintiff is lastly seeking to relief of attachment of the suit property before judgment. Therefore, it makes clear that right to sue survive to the plaintiff against the aforesaid legal heirs of deceased defendant No.3 Virbhdrappa.

5. Moreover, affidavit vide Exh.94 discloses that, defendant No.3 Virbhdrappa expired on 24/09/2019 and he has aforesaid

legal heirs. Vijyakumar Virbhadrappa Shingare who is one of the legal heir of deceased defendant No.3 Virbhadrappa is already party to the present suit.

6. Undoubtedly, there is delay. However, considering aforesaid facts, rival pleadings and nature of relief as sought for, delay may be compensated with the costs. Affidavit vide Exh.92 filed along with present application, also discloses contents of the application. Considering rival pleadings, nature of the relief sought for delay will have to be compensated with the costs.

7. Moreover, the plaintiff will be entitled to the alleged reliefs or not will be decided after conclusion of trial and on merits. In such circumstances, no prejudice would be caused to the defendants or aforesaid legal heirs, if aforesaid legal heirs are brought on record. Hence, in the interest of the justice, I pass following order.

ORDER

1. Applications vide Exh.91 is allowed.
2. Delay for making parties to the aforesaid legal heirs of deceased defendant No.3 Virbhadrappa Murgeppa Shingare is hereby condoned, subject to costs of Rs.2,000/- (Rupees Two Thousand Only) payable by the plaintiff to the defendants.

Date :10/08/2026
Place: Nilanga

(R. V. Pande)
Civil Judge, Senior Division, Nilanga,
District Latur.