

CNRNO-MHLA150003332013

**ORDER BELOW EXH.72.**

1. This application is filed by plaintiff for setting aside abatement order. Defendants have opposed application.
2. It is submitted by plaintiff that, during the pendency of suit defendant no.1 Mallikarjun Nagnath Bhende died on 15.09.2020 and defendant no.2 Prayagbai w/o. Mallikarjun Bhende died on 16.07.2020. It is necessary to bring Lrs., of deceased defendants within 90 days and after that it is deemed to be abated. Plaintiff could not file application within limitation to due to covid-19 situation. The delay is not intentional one. Though the delay has been caused to bring Lrs., on record, but by considering the guidelines of Hon'ble Supreme Court in suo moto writ petition time is extended to filing documents in proceeding. Hence, plaintiff prayed for allowing the application and set aside the abatement order.
3. Per contra, it is submitted by defendants that, there is 90 days and after that 60 days total 150 days time to bring Lrs, on record. On which date suit is abated is not mentioned in the application, so application be rejected.
4. Perused record of case. It appears from record that plaintiff filed suit for perpetual injunction and declaration of

ownership. It appears from record that plaintiff failed to bring legal representative of defendant no.1 and 2 on record within limitation. Application is supported by affidavit of Digamber Nagnath Bhende (Plaintiff). As per application, defendant no.1 died on 15.09.2020 and defendant no.2 died on 16.07.2020 and thereafter, due to covid-19 situation the delay has been caused. There is sufficient reason to setting aside abatement order. Subject matter of the suit is immovable property and valuable rights of the parties are involved in it. No counter affidavit of defendant is filed on record. Today delay condonation application is allowed by passing order below exh.70 dated 03.08.2023. Consider the circumstances of Covid-19 which were existence in the year 2020-2021, if abatement order is set aside then it will not cause any harm to defendants. For the purpose of natural justice, it is necessary to set aside the abatement order. So, I pass following order.

ORDER

Application (Exh.72) is allowed and set aside abatement order on payment of costs of Rs. 200/- (Two hundred only) to be given to the defendant.

Date : 03.08.2023.

(P.P. Kale)
Civil Judge Junior Division,
Chakur.