

ORDER BELOW EXH.48 and 49
(Passed on 05.08.2019)

These are two applications, filed by applicant for condoned the delay to bringing the legal heirs on record and permission to him on record.

2. Called say of defendant. He filed his say behind the same application.

3. Applicant has submitted that, plaintiff Vasantabai is expired on Dtd.25.07.2017. She was his sister. Plaintiff was dead as an unmarried. Plaintiff's parents also dead and applicant is remained only legal heir as a brother of deceased Vasantabai. Applicant is layman, he is not aware of legal proceeding. Applicant is also old age person and now 60 years of age. Applicant is having paralysis. Therefore, due to above mentioned reasons he could not record the date of death before the Grampanchayat and also not informed to the Advocate deceased plaintiff. He is also not capable of daily work. Therefore, he could not contacted to the Advocate and considering this reason delay should be condoned to bring as a legal heir of deceased Vasantabai on record.

4. Ld. Adv. Shri Nagoshe for defendant strongly opposed the application and stated that, applicant is well aware about the legal proceeding because he was present on each and every date in the present matter. The applicant has intention to prolong the matter because at about one year has been lapsed for the death of deceased plaintiff. Therefore, the reason mentioned in the application are not looking bonafide and hence, application be

rejected with costs.

5. Heard Ld. Advocate Shri. Khatik for the applicant and Shri Nagoshe for the defendant. Perused whole record, the application is supported by an affidavit stating therein the reason for delay. It appears that deceased plaintiff is expired on Dtd. 25.07.2017 and these applications are filed on dtd. 19.11.2018. The matter was pending for impounding of document between the plaintiff was dead. The pursis for information also filed by the plaintiff on dtd. 18.12.2017 at Exh.41. Then why the applicant have takes more time to appear before the Court. But he had stated some reason which looks bonafide and he had sufficient cause which prevented him from making an application. Therefore, the deemed abatement needs to be set aside.

6. Present suit is filed for declaration, removal of encroachment, possession and permanent injunction and damages. It appears that applicant is only legal heir of deceased plaintiff, hence, right to sue is survived. In order to enable the Court to effectively and completely adjudicate upon and settled all the questions involved in the suit, it is necessary to allow the application to bring on record legal representative of deceased plaintiff. It is therefore necessary in the interest of justice to allow the application and condoned the delay. Hence, the following order.

Order

1. The application Exh.48 and 49 are allowed, subject to costs of Rs.500/-(Five Hundred) be paid to defendant.
2. The deemed abatement order passed against plaintiff namely Vasantabai Zitu Kurutkar is set aside.

3. The delay is condoned for bringing the legal heirs on record. The applicant is allowed to bring the legal heirs of deceased Vasantabai Zitu Kurutkar on record within two weeks.

Bhiwapur.
Date :05/08/2019

Sd/-
(V. S. Damare)
Judicial Magistrate First Class,
Bhiwapur

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As per Circular No.37/Judl. Br./2018, District and Sessions Court,
Nagpur, Dtd. 31st July, 2018

Endorsement

Case argued on	...	05.08.2019
Judgment/order dictated on	...	05.08.2019
Transcription ready on	...	05.08.2019
Judgment checked and signed on	...	05.08.2019