

MHNS140006412010



ORDER BELOW EXHIBIT 56 R.C.S. NO.79/2010

Shri. Namdev Bharsat and others Vs. Shri. Punja Bharsat and others

(Passed on 11/09/2023)

The present application is filed by the plaintiff for setting aside abatement against the defendant no. 15/2.

2 It is the case of the plaintiff that, during the proceeding of the case defendant no.15/2 Dada Zavaru Gaikwad died on 29/08/2020. The plaintiff no 5 Laxman Pandu Bharsat died on 28/04/2021. The legal representatives of the said deceased defendant and plaintiff need to be taken on record within 90 days as per law. However, non-obtaining the information regarding the name and addresses of the legal representatives of the deceased this plaintiff unable to bring on record the legal representatives of the deceased defendant and plaintiff within statutory period, therefore the delay is about 19 months caused for bringing legal representatives of the deceased defendant no. 15/2 and delay of the 09 months caused or bringing legal representatives of the deceased plaintiff has been caused. The suit is abated against this defendant automatically. The said delay is not deliberate. If the abatement is not set a side then plaintiff will suffer with gross injustice. Hence, prayed for setting aside the abatement order.

3. Notice to legal representative of the this defendants has been served on 02/02/2023, though they do not appear and file their say on the present application hence this application proceeded without their say. Notice to legal representative of the deceased plaintiff no. 5

also served however despite ample opportunity he failed to file say, hence this application proceeds without their say.

4. Heard. Perused record. It is apparent that the application is filed beyond the period of 90 days from the date of death as well as from the date of knowledge of death. The plaintiff has failed to explain properly why the delay caused to bring on record the legal representative of the deceased plaintiff. The delay caused bringing a legal representative on record and for that reason case is lingering on the stage for a long. So, the delay could not be overlooked. It can be compensated by imposing the cost on the plaintiff. However, the cost of Rs.500/- imposed upon the plaintiff while passing order below exhibit 59, so I am not inclined to imposed the cost on the plaintiff under this application. Therefore, only to aid in the proper adjudication of the case on merits, it is necessary to set aside the abatement order, so that suit will proceed further without any defect. In this backdrop, I pass the following order.

ORDER

1. Application is allowed.
2. Abatement is hereby set-aside.

Date :- 11/09/2023

(Ashwini A.Pandit)
2nd Joint Civil Judge Junior Division,
Dindori (MH03260)