

ORDER BELOW EX. 46**(Passed On 24th November 2021)**

1. These are application under section 5 of Limitation Act condonation of delay for bringing legal representatives of deceased defendant No. 3 Yamunabai Pundalik Thorat and defendant No. 4 Sonyabai @ Anusuyabai Kisan Solase, permission for bringing legal representative of deceased defendant No. 3 Yamunabai Pundlik Thorat and defendant No. 4 Sonyabai @ Anusuyabai Kisan Solase on record and for Setting Aside the abatement of suit preferred by plaintiff.

2. Perused the application and read the reply. I have heard Mr. D.R. Gangurde learned counsel for plaintiff and Mr. S.B. Gunjal learned counsel for defendants.

3. Mr. Gangurde learned counsel for plaintiff submitted that plaintiff has filed suit for partition, separate possession, declaration and permanent injunction against the defendants. Mr. Gangurde submitted that the persons mentioned in application are the legal representatives of deceased defendant No. 3 Yamunabai Pundalik Thorat who died on 30-06-2019 and defendant No. 4 Sonyabai @ Anusuyabai Kisan Solase who died on 08-06-2018 and even death certificate of deceased defendant No. 3 Yamunabai Pundalik Thorat and defendant No. 4 Sonyabai @ Anusuyabai Kisan Solase could not be obtained before filing the instant application. Mr. Gangurde further submitted that there was lock down due to COVID-19 situation and even plaintiff being layman and illiterate could not file application for bringing legal heirs of deceased defendant No. 3 Yamunabai Pundalik Thorat and defendant No. 4 Sonyabai @

Anusuyabai Kisan Solase on record within time hence, present application is filed on record. Mr. Gangurde submitted that plaintiff has sufficient and reasonable cause for not filing the application within specified time and accordingly prayed to condone the delay of around 2 years 2 months to bringing legal representatives of deceased defendant No. 3 Yamunabai Pundalik Thorat and to condone the delay of around 3 years 1 months in bringing legal representatives of defendant No. 4 Sonyabai @ Anusuyabai Kisan Solase on record and to allow the instant application.

4. Mr. Gunjal learned counsel for defendants vehemently opposed the instant application and submitted that the instant application at this stage is not maintainable. Mr. Gunjal learned counsel for defendants submitted in consonance to their reply and further submitted that there is delay of around 2 years 2 months in bringing legal representatives of deceased defendant No. 3 Yamunabai Pundalik Thorat and delay of around 3 years 1 months in bringing legal representatives of defendant No. 4 Sonyabai @ Anusuyabai Kisan Solase. Mr. Gunjal learned counsel for defendants submitted that the explanation tendered by plaintiff does not appear to be probable and convincing. Mr. Gunjal submitted that application is bogus, vexatious and time barred and prayed to outrightly reject it with heavy cost.

5. The plaintiff is seeking liberty to bring on record the legal representatives of deceased defendant No. 3 Yamunabai Pundalik Thorat and defendant No. 4 Sonyabai @ Anusuyabai Kisan Solase. The date of death of deceased defendant No. 3 Yamunabai Pundalik Thorat is 30-06-2019 and defendant No.

4 Sonyabai @ Anusuyabai Kisan Solase is 08-06-2018 and the present application is filed beyond stipulated period from the date of death of deceased defendant No. 3 Yamunabai Pundalik Thorat and defendant No. 4 Sonyabai @ Anusuyabai Kisan Solase.

6. The present application is supported by an affidavit stating the genuine reasons for not preferring the application at within stipulated time. The plaintiff had sufficient cause which prevented them from making application for bringing legal representatives of deceased defendant No. 3 Yamunabai Pundalik Thorat and defendant No. 4 Sonyabai @ Anusuyabai Kisan Solase. The abatement needs to be set aside in the interest of justice.

7. In order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit, it is necessary to allow the application to bring on record the legal representatives of deceased defendant No. 3 Yamunabai Pundalik Thorat and defendant No. 4 Sonyabai @ Anusuyabai Kisan Solase. There appears to be no other legal heirs except those named in application. Thus it is therefore necessary in the interest of justice to allow the application as plaintiff has shown sufficient cause for not preferring application within specified time.

8. On going through the instant application in the light of pleadings of both parties and arguments canvassed before me this Court is satisfied that it is necessary to condone the delay for bringing the legal representatives of deceased defendant No. 3 Yamunabai Pundalik Thorat and defendant No. 4 Sonyabai @

Anusuyabai Kisan Solase on record for the purpose of determining the real question in controversy between the parties and for the fair adjudication of trial. It is pertinent to state that no prejudice would be caused to defendants if they are compensated by way of costs. In the result, I am inclined to pass the following order.

ORDER

- 1] The application at Ex. 46 is allowed with costs.
- 2] The delay is condoned for bringing legal representatives of deceased defendant No. 3 Yamunabai Pundalik Thorat and defendant No. 4 Sonyabai @ Anusuyabai Kisan Solase on record.
- 3] The plaintiff is allowed to bring the legal representatives of deceased defendant No. 3 Yamunabai Pundalik Thorat and defendant No. 4 Sonyabai @ Anusuyabai Kisan Solase on record of the suit within 14 days from the date of the order (2 weeks).
- 4] The plaintiff is directed to pay cost of Rs. 1000/- (One Thousand Only) to the other side & Rs. 1000/- (One Thousand Only) in TLSA/DLSA. On failure to pay cost instant application shall stands automatically rejected.

Place :- Chandwad.

Date :- 24-11-2021.

(N. A. Ingley)
Civil Judge Junior Division
Chandwad

CERTIFICATE

I affirm that the contents of this PDF file are same as per original order.

Name of Stenographer	:- Sau. Gayatri K. Suryawanshi.
Court Name	:- Civil Judge Junior Division Chandwad.
Date of Decision	:- 24-11-2021.
Signed by presiding officer	:- :- 26-11-2021.
Uploaded on	:- 26-11-2021.