

ORDER BELOW EX. 39, EX. 41 & EX.43.**(Passed On 01st September, 2021)**

1. These are applications under section 5 of Limitation Act condonation of delay at Ex. 41, for Setting Aside the abatement of suit and under Order 22 Rule 3 of Code of Civil Procedure Code, 1908, at Ex. 39 and for permission to bring the legal representatives of deceased plaintiff Bajirao Bala Shinde at Ex. 40 on record preferred by legal representatives of plaintiff.

2. Perused the applications at Ex. 39, Ex. 41 & Ex. 43 and read the reply. I have heard Mr. D.S. Wagh learned counsel for applicants and Mr. S.D. Jadhav learned counsel for defendants.

3. Mr. Wagh learned counsel for applicants submitted that plaintiff has filed suit for permanent injunction and mandatory injunction against the defendants. Mr. Wagh submitted that the persons mentioned in application are the legal representatives of deceased plaintiff Bajirao Bala Shinde who died on 14-01-2020 and the applicants failed to get death certificate of deceased plaintiff before filing the instant application. Mr. Wagh further submitted that applicants are layman and being illiterate could not file application for bringing legal heirs of deceased plaintiff on record within time hence, present applications are filed on record. Mr. Wagh submitted that applicants have sufficient and reasonable cause of COVID-19 pandemic and lock down situation for not filing the application withing specified time and accordingly prayed to

condone the delay of around 13 months in bringing legal representatives of deceased plaintiff on record and to allow the instant applications at Ex. 39, Ex. 41 & Ex. 43.

4. Mr. Jadhav learned counsel for defendants vehemently opposed the instant application and submitted that the instant application at this stage is not maintainable. Mr. Jadhav submitted in consonance to his reply and further submitted that there is delay of around 13 months in bringing legal representatives of deceased plaintiff Bajirao Bala Shinde on record. Mr. Jadhav submitted that the explanation tendered by plaintiff does not appear to be probable and convincing. Mr. Jadhav submitted that applications are bogus, vexatious and time barred and prayed to outrightly reject it with heavy cost.

5. The applicants are seeking liberty to bring on record the legal representatives of deceased plaintiff Bajirao Bala Shinde. The date of death of plaintiff Bajirao Bala Shinde is 14-01-2020 and the present applications at Ex. 39 and Ex. 41 are filed on 24-04-2021 i.e. beyond stipulated time from the date of death of deceased plaintiff Bajirao Bala Shinde.

6. The present application is supported by an affidavit stating the genuine reasons for not preferring the application at Ex. 39, Ex. 41 & Ex. 43 within stipulated time. The plaintiff had sufficient cause which prevented them from making application for bringing legal representatives of deceased plaintiff Bajirao Bala Shinde on record. 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 plaintiff Bajirao Bala Shinde. 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 applications as applicants have shown sufficient cause for not preferring application within specified time.

8. On going through the instant applications 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 plaintiff Bajirao Bala Shinde on record and 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 other 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. 39, Ex. 41 & Ex. 43 are allowed with costs.

2] The delay is condoned for bringing legal representatives of deceased plaintiff Bajirao Bala Shinde on record.

3] The applicants are allowed to bring the legal representatives of deceased plaintiff Bajirao Bala Shinde on record of the suit within 14 days from the date of the order (2 weeks).

4] The applicants are directed to pay cost of Rs. 300/- (Three Hundred Only) to the other side. On failure to pay cost instant applications shall stands automatically rejected.

Place :- Chandwad.

Date :- 01-09-2021.

(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	:- 01-09-2021.
Signed by presiding officer	:- :- 02-09-2021.
Uploaded on	:- 03-09-2021.