

ORDER BELOW EX. 63**(Passed On 08th March 2022)**

1. This is application under section 5 of Limitation Act condonation of delay, under Order 22 Rule 4 of Code of Civil Procedure Code, 1908 for permission to bring the legal representatives of deceased defendant No. 1 Eknath Shankar Mali 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. R.C. Jadhav learned counsel for plaintiffs and Mr. P.P. Pawar learned counsel for defendants.

3. Mr. Jadhav learned counsel for plaintiff submitted that plaintiff has filed suit for pre-emption, declaration, perpetual injunction and possession of encroached portion of suit land against the defendants. Mr. Jadhav submitted that the persons mentioned in application are the legal representatives of deceased defendant No. 1 Eknath Shankar Mali on record who died on 28-12-2020 and even death certificate of deceased defendant No. 1 Eknath Shankar Mali could not be obtained before filing the instant application. Mr. Jadhav further submitted that due to COVID-19 situation and even plaintiff being layman and illiterate could not file application for bringing legal heirs of deceased defendant No. 1 Eknath Shankar Mali on record within time hence, present application is filed on record. Mr. Jadhav 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 one month in bringing legal representatives of

deceased defendant No. 1 Eknath Shankar Mali on record and to allow the instant application.

4. Mr. Pawar learned counsel for defendants vehemently opposed the instant application and submitted that the instant application at this stage is not maintainable. Mr. Pawar learned counsel for defendants submitted in consonance to his reply and further submitted that there is delay of around one month in bringing legal representatives of deceased defendant No. 1 Eknath Shankar Mali on record. Mr. Pawar learned counsel for defendants submitted that the explanation tendered by plaintiff does not appear to be probable and convincing. Mr. Pawar however submitted that he has no objection if present application is allowed.

5. The plaintiff is seeking liberty to bring on record the legal representatives of deceased defendant No. 1 Eknath Shankar Mali. The date of death of deceased defendant No. 1 Eknath Shankar Mali is 28-12-2020 and the present application is filed on 22-12-2021 i.e. beyond stipulated period from the date of death of deceased defendant No. 1 Eknath Shankar Mali.

6. The present application is supported by an affidavit stating the genuine reasons for not preferring the present application within stipulated time. The plaintiff had sufficient cause which prevented them from making application for bringing legal representatives of deceased defendant No. 1 Eknath Shankar Mali 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 defendant No. 1 Eknath Shankar Mali. 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. 1 Eknath Shankar Mali 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 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. 47 is allowed with costs.
- 2] The delay is condoned for bringing legal representatives of deceased defendant No. 1 Eknath Shankar Mali on record.
- 3] The plaintiff is allowed to bring the legal representatives of deceased defendant No. 1 Eknath Shankar Mali 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. 350/- (Three Hundred And Fifty Only) to the other side & Rs. 350/- (Three Hundred And Fifty Only) in TLSA/DLSA. On failure to pay cost instant application shall stands automatically rejected.

Place :- Chandwad.

Date :- 08-03-2022.

(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	:- 08-03-2022.
Signed by presiding officer	:- 10-03-2022.
Uploaded on	:- 10-03-2022.