

ORDER BELOW EX. 80**(Passed On 15th 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. 5 Yamunabai Bansilal Sankalecha on record and for Setting Aside the abatement of suit preferred by plaintiff of counter claim.

2. Perused the application and read the reply. I have heard Mr. V.B. Datte learned counsel for plaintiff of counter claim and Mr. S.S. Thorat along with Mr. S.K. Kulkarni learned counsel for defendants.

3. Mr. Datte learned counsel for plaintiff of counter claim submitted that original plaintiff has filed suit for partition, separate possession, declaration and perpetual injunction against the defendants. Mr. Datte submitted that the persons mentioned in application are the legal representatives of deceased defendant No. 5 Yamunabai Bansilal Sankalecha who died on 22-05-2021 and even death certificate of deceased defendant No. 5 Yamunabai Bansilal Sankalecha could not be obtained before filing the instant application. Mr. Datte further submitted that due to COVID-19 situation and even plaintiff of counter claim being layman and illiterate could not file application for bringing legal heirs of deceased defendant No. 5 Yamunabai Bansilal Sankalecha on record within time hence, present application is filed on record. Mr. Datte submitted that plaintiff of counter claim has sufficient and reasonable cause for not filing the application within specified time and

accordingly prayed to condone the delay of around 205 days in bringing legal representatives of deceased defendant No. 5 Yamunabai Bansilal Sankalecha on record and to allow the instant application.

4. Mr. Thorat along with Mr. Kulkarni learned counsel for defendants vehemently opposed the instant application and submitted that the instant application at this stage is not maintainable. Mr. Thorat learned counsel for defendants submitted in consonance to his reply and further submitted that there is delay of around 205 days in bringing legal representatives of deceased defendant No. 5 Yamunabai Bansilal Sankalecha on record. Mr. Thorat learned counsel for defendants submitted that the explanation tendered by plaintiff of counter claim does not appear to be probable and convincing. Mr. Thorat submitted that application is bogus, vexatious and time barred and prayed to outrightly reject it with heavy cost.

5. The plaintiff of counter claim is seeking liberty to bring on record the legal representatives of deceased defendant No. 5 Yamunabai Bansilal Sankalecha. The date of death of deceased defendant No. 5 Yamunabai Bansilal Sankalecha is 22-05-2021 and the present application is filed beyond stipulated period from the date of death of deceased defendant No. 5 Yamunabai Bansilal Sankalecha.

6. The present application is supported by an affidavit stating the genuine reasons for not preferring the present application within stipulated time. The plaintiff of counter claim had sufficient cause which prevented them from making

application for bringing legal representatives of deceased defendant No. 5 Yamunabai Bansilal Sankalecha 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 counter claim, it is necessary to allow the application to bring on record the legal representatives of deceased defendant No. 5 Yamunabai Bansilal Sankalecha. 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 plaintiff of counter claim has 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 defendant No. 5 Yamunabai Bansilal Sankalecha 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. 80 is allowed with costs.
- 2] The delay is condoned for bringing legal representatives of deceased defendant No. 5 Yamunabai Bansilal Sankalecha on

record.

3] The plaintiff of counter claim is allowed to bring the legal representatives of deceased defendant No. 5 Yamunabai Bansilal Sankalecha on record of the suit within 14 days from the date of the order (2 weeks).

4] The plaintiff of counter claim is directed to pay cost of Rs. 450/- (Four Hundred And Fifty Only) to the other side & Rs. 450/- (Four Hundred And Fifty Only) in TLISA/DLSA. On failure to pay cost instant application shall stands automatically rejected.

Place :- Chandwad.

Date :- 15-03-2022.

(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	:- 15-03-2022.
Signed by presiding officer	:- 17-03-2022.
Uploaded on	:- 17-03-2022.