

ORDER BELOW EX. 33, EX. 36 & EX. 38**(Passed on 04th March 2020)**

1. These are applications under section 5 of Limitation Act condonation of delay at Ex. 36, for Setting Aside the abatement of suit and under Order 22 Rule 3 of Code of Civil Procedure Code, 1908, at Ex. 38 and for permission to bring the legal representatives of deceased plaintiff Namdev Kisan Kale at Ex. 33 on record preferred by proposed legal representatives of plaintiff.

2. Perused the applications at Ex. 33, Ex. 36 & Ex. 38 and read the reply. I have heard Mr. V.S Patil learned counsel for plaintiff and Mr. V.V Jadhav learned counsel for defendant No. 1 to 2 and Mr. R.C Jadhav learned counsel for defendant No. 3.

3. Mr. Patil learned counsel for plaintiff submitted that plaintiff has filed suit for specific performance of contract, declaration and permanent injunction against the defendants. Mr. Patil submitted that the persons mentioned in application are the legal representatives of deceased plaintiff Namdev Kisan Kale who died on 12-09-2019 and even death certificate of deceased plaintiff Namdev Kisan Kale could not be obtained before filing the instant application. Mr. Patil further submitted that proposed legal representatives of plaintiff 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. Patil submitted that proposed legal representatives of plaintiff have sufficient and

reasonable cause for not filing the application within specified time and accordingly prayed to condone the delay of around 23 days in bringing legal representatives of deceased plaintiff on record and to allow the instant applications at Ex. 33, Ex. 36 & Ex. 38.

4. Mr. V.V Jadhav learned counsel for defendant No. 1 and 2 and Mr. R.C Jadhav learned counsel for defendant No. 3 vehemently opposed the instant application and submitted that the instant application at this stage is not maintainable. Mr. V.V Jadhav learned counsel for defendant No. 1 and 2 and Mr. R.C Jadhav learned counsel for defendant No. 3 submitted in consonance to their reply and further submitted that there is delay of around 23 days in bringing legal representatives of deceased plaintiff on record. Mr. V.V Jadhav learned counsel for defendant No. 1 and 2 and Mr. R.C Jadhav learned counsel for defendant No. 3 submitted that the explanation tendered by proposed legal representatives of 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 proposed legal representatives of plaintiff are seeking liberty to bring on record the legal representatives of deceased . The date of death of deceased plaintiff Namdev Kisan Kale is 12-09-2019 and the present applications at Ex. 33 and Ex. 38 are filed on 06-12-2019 i.e beyond 90 days from the date of death of deceased plaintiff Namdev Kisan Kale.

6. The present application is supported by an affidavit stating the genuine reasons for not preferring the application at Ex. 33, Ex. 36 and Ex. 38 within stipulated time. The proposed legal representatives of plaintiff had sufficient cause which prevented them from making application for bringing legal representatives of deceased plaintiff Namdev Kisan Kale 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 Namdev Kisan Kale. 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 proposed legal representatives of plaintiff 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 Namdev Kisan Kale 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. 33, Ex. 36 & Ex. 38 are allowed with costs.
2. The delay is condoned for bringing legal representatives of deceased plaintiff Namdev Kisan Kale on record.
3. The proposed legal representatives of plaintiff are allowed to bring the legal representatives of deceased plaintiff Namdev Kisan Kale on record of the suit within 14 days from the date of the order (2 weeks).
4. The proposed legal representatives of plaintiff are directed to pay cost of Rs. 200/- (Two Hundred Only) to the other side. On failure to pay cost instant applications shall stands automatically rejected.

Place:- Chandwad

Date:- 04-03-2020.

(N. A Ingley)

Civil Judge Junior Division

Chandwad