

ORDER BELOW EX.37.

(Passed On 01st July, 2024)

1. This is an application for permission to bring legal representatives of deceased Defendant No. 1 Hastimal Phulchand Burad on record under Order 22 Rule 4 of C.P.C., preferred by plaintiff. Perused the application and reply. I have heard learned counsel for plaintiff and learned counsel for defendants.

2. Plaintiff's Advocate submitted that Defendant No. 1 Hastimal Phulchand Burad has died on 22-09-2023 and proposed legal representatives of deceased as mentioned in instant application needs to be brought on record. Plaintiff's Advocate submitted that, in order to decide to suit on merit and for preventing multiplicity of proceeding instant application need to be allowed. Hence, an application for permission to bring legal representatives of deceased may kindly be allowed.

3. Learned counsel for defendants vehemently opposed the instant application and submitted that there is a delay in preferring present application and prayed to outrightly reject.

4. 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 proposed legal representatives of deceased Defendant No. 1 Hastimal Phulchand Burad. 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.

5. 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 bring the proposed legal representatives of deceased Defendant No. 1 Hastimal Phulchand Burad on record for the purpose of determining the real question

in controversy between the parties and for the fair adjudication of trial. In the result, I am inclined to pass following order.

ORDER

1. The application is allowed.
2. The plaintiff to allowed to bring the proposed legal representatives of deceased Defendant No. 1 Hastimal Phulchand Burad on record within 14 days from the date of the order and carry out necessary amendment to that respect.

Place :- Chandwad.

Date :- 01-07-2024.

(P.B. Joshi)

**Civil Judge Junior Division,
Chandwad.**

ORDER BELOW EX. 35.
(Passed On 01st July, 2024)

1. This is an application preferred by plaintiff for condoning the delay and setting Aside the abatement of suit against Defendant No. 1 Hastimal Phulchand Burad. Plaintiff's Advocate submitted that Defendant No. 1 Hastimal Phulchand Burad has died on 22-09-2023. Plaintiff's Advocate further submitted that, plaintiff ought to have filed an application for bringing legal representatives of deceased on record within 90 days from the date of death of Defendant No. 1 Hastimal Phulchand Burad. But, due to lack of knowledge could not file said application within time, hence, present application is filed on record. Plaintiff's Advocate submitted that, plaintiff has sufficient and reasonable cause for not filing the application within specified time and accordingly prayed to allow the instant application.

2. Learned counsel for defendants vehemently opposed the instant application and submitted that the cause submitted by plaintiff is not true. He has knowledge of death of Defendant No.1 since beginning. Finally, prayed to allow this application subject to costs.

3. Perused the application and reply. Heard learned counsel for plaintiff and defendants. The plaintiff is seeking liberty to bring on record the legal representatives of deceased Defendant No. 1 Hastimal Phulchand Burad, who died on 22-09-2023. The present application is filed beyond stipulated period from the date of death of deceased. 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 present application for setting aside abatement against deceased on record. In order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit and for the fair

adjudication of trial, it is necessary to allow the 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. Hence, On going through the instant application and in the light of pleadings of both parties and arguments canvassed before me, this Court is satisfied that it is necessary to set aside abatement. 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 following order.

ORDER

- 1] Application is hereby allowed subject to cost of Rs. 1000/- to be given by plaintiff to defendants as a condition precedent.
- 2] Delay caused for bringing L.R's of deceased Defendant No. 1 Hastimal Phulchand Burad is hereby condoned and abatement of suit is set aside against Defendant No. 1 Hastimal Phulchand Burad.

Place :- Chandwad.

Date :- 01-07-2024.

(P.B. Joshi)

Civil Judge Junior Division,
Chandwad.