

**Regular Civil Suit No.177/2011.**

**Order below Exh.78.**

(Date : 26.03.2024)

1. Present application is filed by the plaintiffs for delay condonation in setting aside abatement to bring the legal representatives of deceased defendant Nos.10, 11, 15 and 16 on record.

2. It is contention of the plaintiffs that during the pendency of the suit, defendant No.10 namely Lahanubai Somnath Gaikwad is reported to have died on 30.03.2017, defendant No.11 namely Dropadabai Dhondiram Mahajan died on 18.03.2020, defendant No.15 namely Eknath Rambhau Lonare died on 06.08.2014 and defendant No.16 namely Lilabai Ashok Sawant died on 25.02.2015, leaving behind their legal representatives. Hence, it is necessary to implead them as necessary parties. However, as there is delay in bringing legal representatives of deceased defendant Nos.10, 11, 15 and 16 on record, suit is abated against them. The delay caused is not intentional but due to Covid-19. Moreover, plaintiffs and defendants are residing far away from each other, hence, plaintiffs could not bring on record the legal representatives of said deceased defendants. Hence, prayed to condone the delay in setting aside the abatement.

3. Defendants have filed their say on backside of the application and submitted that application is false and not tenable. Reason for delay is not proper. There is huge delay. Hence, prayed to reject the application and alternatively prayed for costs.

4. It is the contention of the plaintiffs that as defendant Nos.10, 11, 15 and 16 died during the pendency of the suit, their legal representatives are necessary parties in the suit. Hence they needs to be brought on record. In order to substantiate their contention, the plaintiffs have filed copy of death certificate of deceased defendant Nos.10, 11, 15 and 16 below Exh.83 to 86.

I have gone through it. Copy of death certificate filed below Exh.83 shows that Lahanubai Somnath Gaikwad, who is defendant No.10 is died on 30.03.2017. Copy of death certificate filed below Exh.84 shows that Dropadabai Dhondiba Mahajan, who is defendant No.11 is died on 18.03.2020. Copy of death certificate filed below Exh.85 shows that Eknath Rambhau Lonare, who is defendant No.15 is died on 06.08.2014. Copy of death certificate filed below Exh.86 shows that Lilabai Ashok Sawant, who is defendant No.16 is died on 25.02.2015.

5. Perused the record of the case. Present suit is for partition and injunction. As the suit is regarding immovable properties, right and interest of legal representatives of deceased defendant Nos.10, 11, 15 and 16 are involved in it. Hence, in order to decide the suit on merits and to avoid further complications and multiplicity of proceedings, delay for setting aside abatement needs to be condoned. However, defendants needs to be compensated for causing delay. Hence, in the interest of natural justice, I proceed to pass following order :-

### **ORDER**

1. The application is allowed.
2. Delay for setting aside abatement is condoned subject to costs of Rs.1000/- to be paid to the defendants jointly.

**Date : 26.03.2024.**

**Place : Yeola**

**(S. B. Rathod)**  
**2<sup>nd</sup> Jt. Civil Judge, Junior Division,**  
**Yeola.**