

ORDER BELOW EXH.24 IN RCS No.68/2020
Rajendra Nirmal & Anr. Vs. Popat Unchawale & Ors.

The present application is preferred by the Applicant. It is submitted that, the Plaintiff No.1 Rajendra Narsingh Nirmal passed away on 23/04/2021. That, there was delay in taking his the legal representatives on record. That, due to Covid -19 epidemic and S.T. Bus strike and as death certificate could not be obtained with in time, there was delay in taking the legal representatives on record. That, the delay is not deliberate. That, as the rights of the legal representatives are gravely affected, it is necessary to condone the delay and to take the legal representatives on record. Hence, it is prayed that, the present application kindly be allowed.

2] Ld. Advocate for the Defendants has submitted say overleaf and opposed the present application.

3] Perused record. The present application is supported with Affidavit at Exhibit 25. Applications for setting aside abatement and to bring legal heirs on record are at Exhibits 28 & 30 respectively. The fact of the death of Plaintiff No.1 is not denied by the other side. The main suit is for removal of encroachment, handing over of possession and perpetual injunction.

4] As per Order 22 Rule 3 and Rule 5 of the Code of Civil Procedure read with Article 120 in the Schedule to the Limitation Act, application for bringing the legal representatives on record has to be preferred within 90 days of the death of the party. Abatement is caused when the legal representatives are

not taken on record within the stipulated time period.

5] The date of death is stated to be 23/04/2021. The present application is preferred on 16/07/2024. The present application for condonation of delay, setting aside abatement and application for bringing the legal representatives on record were filed on 16/07/2024. Hence, it appears that the period of 90 days has lapsed. The reasons for delay as given in the application appear plausible.

6] Applicants are the legal representatives of the deceased. Even considering the nature of the suit, the right to sue appears to survive. It also appears that, considering the nature of the suit, the rights of legal representatives are affected. Hence, it would be appropriate and just to bring the legal representatives on record. Considering the delay, costs shall be imposed. In these circumstances,

Order

1. *Vide* Section 151 C.P.C., Application is allowed subject to costs of Rs.100/- payable to the Defendants collectively and filing of *Vakalatnama* on behalf of the said legal representatives.
2. Costs in cause.
3. Application is accordingly disposed of.

(**Smt.P.S.G.Chalkar**)

Dt.- 31/07/2024.

Jt. Civil Judge Junior Division., Tuljapur

CERTIFICATE

I affirm that, the contents of this P.D.F. file Judgment/order are same, word to word, as per the original Judgment/order.

Name of Stenographer	---	Quadri M.F.
Court	---	Jt.CJJD & JMFC Tuljapur
Date	---	31.07.2024
Order signed by the Presiding Officer on	---	31.07.2024
Order uploaded on	---	31.07.2024