

ORDER BELOW EXH.11 IN CIVIL APPEAL NO. 358/2016.

(Arun Naikwadi Vs. Ramesh Naikwadi)

CNR No. MHPU01-003380-2016

This is an application under Section 5 of the Limitation Act for condonation of delay caused for the purpose of filing application for bringing the legal heirs of deceased Appellant on record.

2] Application is opposed by Respondent by filing Say below Exh. 18 with a prayer to reject the application.

3] Heard both the sides.

4] Respondent had filed a suit for declaration and injunction and it was decreed by the 2nd Joint Civil Judge Junior Division, Pune. Aggrieved by the said Judgment and Decree, original Defendant filed present appeal.

5] It is contended that during the pendency of appeal, the sole Appellant Arun Krishnarao Naikwadi died on 21/01/2019, survived by widow, two sons and a daughter. The proposed legal heirs have contended that they were not aware about the present appeal, therefore, they could not approach to their Advocate. They further contended that for the purpose of filing application for bringing them as legal heirs on record, delay has been caused, so the same may be condoned.

6] Per contra, the learned Advocate submitted that the ground put forth by the proposed legal heirs is not true. Further, on death of sole Appellant, appeal has been automatically abated. So also, cause of action also do not survive, hence, the application is liable to be rejected.

7] In support of contentions, the learned Advocate for Respondent has relied upon a ruling Gajanan s/o Namdeo Kale Vs.

Sakhubai w/o Bhimaji Kharat (died) and others, 2012(4) Mh.L.J.

470 wherein it was held that when decree passed by the trial court is inseparable and indivisible, on failure of one of the legal heirs to be brought on record, whole appeal abates.

8] I have considered submissions of the both parties. Admittedly, before the trial court, the proposed legal heirs were not party to the R.C.S. No. 207/2011. So, it is natural that they may not have knowledge about pendency of suit and present appeal, as well.

9] Article 120 of the Limitation Act has provided period of 90 days for filing an application for bringing on record legal heirs of deceased party. On careful reading of the ratio laid down in the aforesaid ruling, with due respect the same is not applicable to the case at hand being on different facts.

10] Considering the reason cited by the proposed legal heirs supported by affidavit (Exh. 12) I have no reason to disbelieve the same. Therefore, subject to reasonable costs present application deserves to be allowed. Hence, following order –

ORDER

- 1] Application is hereby allowed subject to costs of Rs. 1000/- payable to the Respondent on or before next date.
- 2] If costs is paid within time, further application is filed by the applicants / proposed legal heirs for setting aside abatement order and for bringing them on record shall be taken up for hearing.
- 3] In case, order is not complied with within time, consequential order shall follow.

Dated: 20/01/2020

Ad-hoc District Judge-8, Pune.

CERTIFICATE

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

Name of Steno :- Smt. S. S. Phadke, (Steno- Grade-I)

Court Name :- Shri. D. D. Almale
Ad hoc District Judge – 8, Pune.

Date :- 20/01/2020

Order signed by
P.O. On :- 20/01/2020

Order uploaded on :- 21/01/2020

