

MHPU180003872020

**ORDER BELOW EXHIBIT No.26**(Dhondiba Dagadu Thombare Vs. Ramdas Dhondiba Thombare, etc-1)

1. By filing present application the plaintiff is seeking permission to set aside deemed abatement against the deceased defendant No.2. Till date, the defendants failed to submit say. Therefore, considering the age and nature of the matter I proceed to decide present application without say of the defendants.
2. Perused both the application and affidavit in support of it. Perused the documents on record.
3. Heard Mr.V.A.Mallav, learned advocate for the plaintiff. Defendants and their learned advocates are absent.
4. Mr.V.A.Mallav, learned advocate for the plaintiff submitted that the plaintiff filed delay condonation application for restoration of the suit. However, during the pendency of the said application, defendant No.2 is died on 25/07/2024 but due to lack of knowledge and necessary documents the plaintiff could not bring her legal representatives on record within time. According to him, there is near about 150 days delay for filing present application and the said delay is not intentional and deliberate. According to him, the original suit was for cancellation of sale-deed, declaration and permanent injunction in respect of immovable property and therefore, it is necessary to bring legal representatives of the deceased defendant No.2 on record for deciding the original suit on merit. Hence, he prayed to set aside deemed abatement against the deceased defendant No.2.
5. Perusal of certified copy of death certificate of the defendant No.2, it appears that she is died on 25/07/2024 and present application has been filed by the plaintiff on 22/01/2025. There is near about 150 days delay for filing present application. Today, the same is condoned vide order below Exh.24. The plaintiff has also filed affidavit in support of the application. The original suit for which present restoration application is pending is in respect of immovable property and the deceased defendant No.2 is survived by legal representatives. Therefore, right to sue survives in her legal representatives. If permission is granted to set aside deemed abatement, no prejudice is caused to other side. In such circumstances, considering the nature of the original suit, present application deserves to be allowed. Hence, I proceed to pass the following order :

:- ORDER :-

1. The application (Exh.26) is hereby allowed and deemed abatement is set aside.
2. No order as to cost.

Date : 03/12/2025.

(G.S.Badgujar)
3rd Jt.Civil Judge Jr. Dv., Daund.

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	Shri. S. B. Khule
Name of Court	3 rd Jt. CJJD & JMFC, Daund, Dist. Pune.
Date of Dictation	03/12/2025.
Judgment/Order signed by the PO on	03/12/2025.
Judgment /order uploaded on	03/12/2025.