



ORDER BELOW EXH. No. 99 IN R.C.S. No. 262/2011

[Minakshi Dilip Magar Vs. Gopa Thakar and Ors.]

(Passed on 11th March, 2025)

Plaintiff has filed this application to condone delay arose in setting aside the abatement order for defendant no. 2B. Ld. Advocate of plaintiff has submitted that defendant no. 2B Saraswati Prabhu Thakar died on 21.08.2024. But her legal heirs could not be brought on record within limitation. Therefore, in order to decide this suit on merit, delay arose in setting aside abatement order may be condoned and abatement be set aside.

2. Plaintiff have relied upon following case laws :-

- i. **Stephen Laslie Victor D'souza Vs. Stanley Antony D'souza [Suit no. 1164 of 1996, dtd.26.02.1998]** in which it is held that, *"During pendency of suit, plaintiffs getting information from defendant's counsel about death of one of the defendants prior to filing of suit – plaintiffs thereafter taking immediate steps and seeking leave to join the legal representative of deceased party allowed."*
- ii. **Keshao Kawadu Maral and anr. Vs. State of Maharashtra [Writ Petition No. 2571 of 1991, in the Court of Hon'ble Bombay High Court, dtd. 28.10.2004]** in which it is held that, *"Delay has to be computed from the date of knowledge of death of a party – held, since provisions of Order XXII, Rule 1 of Code are not penal in nature pedantic approach should not have been taken, which would defeat substantive right of the party."*

These case laws are discussed at appropriate place during the course of reasoning.

03. On the other hand, defendants have filed say and resisted this application on the ground of being false, frivolous as long delay of

180 days is caused intentionally despite of knowledge. Hence, application be rejected.

04. Heard both sides at length. Perused the record in detail. The suit is for injunction and specific performance of contract. The legal heirs of defendant no. 2B are already on record. Further in view of ratio relied by plaintiffs, the period of delay is to be counted from the date of knowledge and lenient view should be taken as the provision is not penal in nature. In this case the pursis of intimation at Exh. 94 is given on 09.01.2025 by advocate of defendant no. 2A to 2E. Further, without all the legal heirs and entry in respect of status of deceased defendant, suit cannot be decided on merits. Further, rejection of this application will lead to multiplicity of the proceeding and frustration of suit. Thus, in order to decide this suit on merit, and to avoid multiplicity of proceedings, as right to sue and be sued survives to the existing legal heirs of deceased defendant no. 2B, so in the interest of justice, delay is condoned subject to costs of Rs.300/- to be paid to defendant no. 2A to 2E. Hence, I proceed to pass following order :-

ORDER

Application is allowed subject to costs of Rs.300/- (Rupees Three Hundred only) to be paid to defendant no. 2A to 2E.

Daund.
Date :- 11.03.2025.

[Smt. S. A. Virani]
Jt. C.J.J.D., Daund, Dist. Pune.

CERTIFICATE

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

Name of Steno	:-	S. R. Banda.
Name of the Court	:-	Smt. S. A. Virani, Jt. C.J.J.D., Daund, Dist. Pune.
Order date	:-	11.03.2025.
Order signed by the Presiding Officer on	:-	11.03.2025.
Order uploaded on	:-	11.03.2025.