

Sharda Balu Wakchoure

Vs

Balu Vitthoba Temgire..etc..14

ORDER BELOW EXH. 18

1. The plaintiff has filed this application for setting aside the deemed order of abatement of suit, condoning the delay to bring legal representatives of the defendant No.6 and bringing legal representatives of the defendant No.6 on record.

2. Heard Ld. advocate for plaintiff. Considered his submissions.

3. The Ld. advocate for the plaintiff submitted that the defendant No.6 namely Sabhaji Bhau Temgire died on 11/07/2011. The plaintiff has not obtained information about the death of defendant No.6. After the knowledge of said death, to obtain death certificate of defendant No.6, plaintiff required lot of time. Ultimately plaintiff fails to bring legal representatives of defendant No.6 within 90 days from the date of death.

4. The Ld. advocate for the plaintiff further submitted that due to failure to file an application to bring a legal representative of the deceased defendant No.6 within a stipulated time, the suit was deemed abated. Therefore, he has filed an application for setting aside the deemed order of abatement of the suit. He further submitted that there is a delay of around 90 days to file an application to bring the legal representatives of the defendant No.6 on record. He also submitted that the delay was not intentional but bonafide. Hence, prayed for setting aside the deemed order of abatement of suit and condoning the delay to bring legal representatives of the defendant No.6 on record.

5. The notice was served to the legal heirs of the defendant No.6. But they failed to file their say. Hence, application is proceeded without their say.

6. On perusal of the record, it appears that the suit is filed for the partition and declaration. It also appears that the suit had abated owing to no formal application to bring a legal representative of the defendant No.6 preferred within the stipulated time. The plaintiff has not obtained information about the death of defendant No.6. After the knowledge of said death, to obtain death certificate of defendant No.6, plaintiff required lot of time. Therefore, plaintiff was unable to file an application to bring legal representative of the deceased defendant No.6 within a stipulated time.

7. I am of the opinion that it would be just and proper to adopt a justice-oriented approach. The ordinary litigant ought not to be denied an opportunity of having a suit determined on merit unless he has by gross negligence, deliberate inaction or something akin to misconduct, disentitle himself from seeking indulgence of Court.

8. Further, denying the plaintiff an opportunity of his application being consider merely on ground of delay would be unjust. On other hand, considering the application for bringing the legal heirs on record on merits would not tilt the scale against the defendants.

9. In view of the above-discussed reasons I am of the opinion that to decide the present suit on merit it would be just and proper to set

aside an abatement order. Simultaneously, condone the delay to file an application to bring the legal representative of the plaintiff on record. Hence, I pass following order.

O R D E R

- 1) The applications at Exh.18 is allowed subject to cost of Rs.100/- be paid to the government.
- 2) The deemed order of abatement of the suit on account of the death of the deceased defendant No.6 is set aside.
- 3) The delay in bringing the legal heirs of the deceased defendant No.6 is condoned.
- 4) The legal representative of defendant No.6 be taken on record as prayed in application on payment of above-mentioned cost.
- 5) The plaintiff is directed to carry out aforesaid amendment and file amended copy of plaint on record within 14 days from the date of this order.
- 6) Parties to note.

Sd/-

Date : 22/04/2025
Ghodegaon,

(Sneha Sunil Pulujkar)
Joint Civil Judge Junior Division,
Ghodegaon, Dist. Pune

C E R T I F I C A T E

I affirm that the contents of this PD.F file are the same word for word as per the original order / Judgment.

Name of the Court : Smt. Sneha Sunil Pulujkar ,
Jt. C.J.J.D. and J.M.F.C.,
Ghodegaon, Dist. Pune.

Name of the Steno : J. S. Kaite, Steno Grade - III.

Order / Judgment date : 22/04/2025

Order / Judgment signed by P.O. : 22/04/2025

Order / Judgment uploaded on : 22/04/2025