

COMMON ORDER BELOW EXH.56A & 58 IN RCS
NO.107/2010

Perused application moved at Exh.56A by plaintiff. It is submitted that the defendant No.1 has expired on 22.04.2013. It was necessary to bring his LR's on record, however as the plaintiff had met with accident and as his leg was fractured, the plaintiff could not take necessary steps. It is further submitted that the application for temporary injunction moved by plaintiff at Exh.5 has been allowed and the appeal against the same is pending in the Appellate Court. There is delay in bringing the LR's of the defendant No.1 on record. Considering the facts the delay caused be condoned.

The defendant has filed his say to Exh.56A at Exh.62. The defendants have strongly opposed the application. It is submitted that the plaintiff had the knowledge of the fact that the defendant No.1 had expired on 22.04.2013 and had to take the necessary steps within 90 days from the date of death. The plaintiff as failed to take necessary steps, the suit has automatically abated against the defendant No.1 LR's. It is further submitted that the reasons given for delay are not supported by any documentary evidence and hence the fact submitted by plaintiff to the effect that he had met with accident and was bed ridden cannot be accepted. That due to negligence of plaintiff, the defendant are required to face unnecessary harassment by requiring to remain present in court. The defendants have prayed for rejection of application.

The application Exh.58 is moved by plaintiff vide O-6 R-17 of CPC for taking the LR's of deceased defendant No.1 on record . The defendants have not filed any say to the said application, hence no say order is passed against them.

The plaintiff has submitted that as he had met with

accident, he was unable to take the LRs of defendant No.1 on record. The plaintiff has nowhere denied that he did not know about the date of death of defendant No.1. Thus considering this fact it was necessary for the plaintiffs to take the LRs on record in time. The plaintiff has forwarded the reason that he had met with accident. However, the plaintiff has not brought anything on record to support his contention. Though it is so considering the nature of suit and to finally settle the dispute between the parties and to avoid multiplicity of proceeding, it would be proper and in the interest of justice to condone the delay and to allow the amendment accordingly, subject to cost, as prima-facie there is negligence on the part of plaintiff. Accordingly, I proceed to pass order as under;

ORDER

1. Applications filed at Exh.56A & 58 are allowed subject to cost of Rs.1000/- to be paid to defendants.
2. The Lrs of defendant No.1 be taken on record and the amendment be carried out within 14 days.
3. The copy of amended plaint be filed on record.

Date : 30.06.2016

C.J.J.D.,
Ghodegaon

CERTIFICATE

I affirm that the contents of this PDF file are word to word as per original Order.

Name of the Steno : R.B.Waghmare.

Name of the Court : Judicial Magistrate (F.C.) Court,
Ghodegaon

Date of Order : 30.06.2016

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