

**ORDER BELOW EXH.22 IN CIVIL MISC. APPLICATION
NO.80/2015**

Being aggrieved by the impugned judgment and decree passed in Reg. Civil Suit No.246/2000 dated 30/04/2008 the intending appellant / applicant- Smt. Aashalata Vasant Walanj has filed the necessary application for the condonation of delay of 06 years 10 months and 06 days in filing the necessary appeal.

2] It is to be noted that in the matter after filing of affidavit of evidence, the applicant Smt. Aashalata Walanj died on 31/05/2018. In the said background the applicant Shri. Chandrakant Ramchandra Patil filed the instant application for allowing him to appear as a legal representative of the Late Smt. Aashalata Walanj as per the provisions under Order 22 Rule 3,4 and 10 of the C.P.C.

3] Heard the Ld. Adv. Shri. S.N. Joshi for the proposed LR - Shri. Chandrakant Patil who submitted that the applicant Chandrakant has filed the instant application within the period of limitation in the background that the Late Aashalata Walanj has no other LR s from her family as she was issueless. Ld. Adv. submitted that the original RCS No.246/2000 pertains to the property at mouje Nagaon, Tal. Alibag in Gut No.2457(old Survey No.37/1C) admj. 0-11-0 (H.R.). Ld. Adv. submitted that the intending LR had purchased the said suit property from Late Aashalata vide a registered sale deed dated 18/10/2010 and as such he

become the legal representative as per the definition under section 2(11) of C.P.C. Ld. Adv. submitted that being legal representative of the said Aashalata due to such transaction and having interest in the suit property the applicant Chandrakant is required to be brought on record and allow him to continue with the proceeding. Ld. Adv. submitted that in the given circumstanes applicant – Chandrakant be allowed to participate in the proceeding by making necessary amendment in the title clause as a Legal Representative of Late Aashalata Walanj and prayed accordingly.

4] In support of the submissions Ld. Adv. replied upon *Karedla Parthasaradhi Vs. Gangula Ramanamma (2014) 15 Supreme Court Cases 789* and submitted that as per the provisions under Order 22 Rule 5 it will be necessary to remand the case to the Trial Court for deciding the question as to whether the present applicant – Chandrakant Ramchandra Patil can be considered as legal representative of Aashalata Walanj and if so in which capacity. Ld. Adv. further submitted that as per the provisions necessary order be passed.

5] Resisting the application Ld. Adv. Shri. Cheulkar submitted that the application is filed with malafide intentions and the applicant Chandrakant cannot be considered as a legal representative. Ld. Adv. submitted that in the present matter late Aashalata had filed her affidavit in

lieu of evidence. Ld. Adv. also submitted that during the pendency of RCS No.246/2000 and later on after its disposal by the Judgment and Decree, the applicant Chandrakant had purchased the suit property from late Aashalata, who did not challenge the said impugned judgment and decree for about 6 years however, after the transaction between the parties, it was the intending applicant who insisted Smt. Aashalata to file such application with application for the condonation of delay on false ground. Ld. Adv. further submitted that as Smt. Aashalata died issueless she has no legal heirs except the opponent No.1 and as such applicant cannot be allowed to proceed with the matter in capacity of legal representative of Late Aashalata. Ld. Adv. submitted that the applicant Chandrakant has no legal right to appear in the matter and hence the applicant be rejected.

6] Upon hearing the Ld. Advocates and after going through the contentions in the application it is not disputed that the suit property was sold by Smt. Aashalata to the applicant Chandrakant Patil vide registered sale deed. Now the applicant Chandrakant Patil intends to appear in the matter as a legal representative of Late Smt. Aashalata in the background that she has no successor to the property as she was issueless and that he can be considered as a legal representative of Late Smt. Aashalata as he has purchased the suit property by executing a registered sale deed.

7] In the background of submissions if we peruse the provisions of Order 22 Rule 5 of C.P.C. which reads as under-

“5. Determination of question as to legal representative – Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the court.

Provided that where such question arises before an appellate court, that court may, before determining the question, direct any subordinate court to try the question and to return the records together with evidence, if any recorded at such trial, its findings and reasons therefor, and the appellate court may take the same into consideration in determining the question.”

8] While deciding the said issue the Hon'ble Apex Court in ***Jaladi Saguna Vs. Satya Sai Central Trust reported in (2008) 8 SCC 521*** and held as under -

“15. Filing an application to bring the legal representatives on record, does not amount to bringing the legal representatives on record. When an LR application is filed, the court should consider it and decide whether the persons named therein as the legal representatives, should be brought on record to represent the estate of the deceased. Until such decision by the court, the persons claiming to be the legal representatives have no right to represent the estate of the deceased, nor prosecute or defend the case. If there is a dispute as to who is the legal representative, a decision should be rendered on such dispute. Only when the question of legal representative is determined by the court and such legal representative is brought on record, can it be said that the estate of the deceased is represented. The determination as to who is the legal representative under Order 22 Rule 5 will of

course be for the limited purpose of representation of the estate of the deceased, for adjudication of that case. Such determination for such limited purpose will not confer on the person held to be the legal representative any right to the property which is the subject-matter of the suit, vis-a-vis other rival claimants to the estate of the deceased.

16. The provisions of Order 22 Rule 4 and 5 are **mandatory**. When a respondent in an appeal dies, the court cannot simply say that it will hear all rival claimants to the estate of the deceased respondent and proceed to dispose of the appeal. Nor can it implead all persons claiming to be legal representatives, as parties to the appeal without deciding who will represent the estate of the deceased, and proceed to hear the appeal on merits. The court cannot also postpone the decision as to who is the legal representative of the deceased respondent, for being decided along with the appeal on merits. The Code clearly provides that where a question arises as to whether any person is or is not the legal representative of a deceased respondent, such question shall be determined by the court. The Code also provides that where one of the respondents dies and the right to sue does not survive against the surviving respondents, the court shall, on an application made in that behalf, cause the legal representatives of the deceased respondent to be made parties, and then proceed with the case. Though Rule 5 does not specifically provide that determination of legal representative should precede the hearing of the appeal on merits, Rule 4 read with Rule 11 make it clear that the appeal can be heard only after the legal representatives are brought on record.”

9] Keeping in view the above said principle of Law and applying the same to the facts of this Case, this Court is of the view that the matter is required to be remanded to the

Trial Court by taking recourse to the provisions of Order 22 Rule 5 for deciding the question as to whether the applicant Chandrakant Ramchandra Patil can be considered as legal representative of Smt. Aashalata and if so in what capacity. Hence order :

ORDER

- 1] Application Exh.22 is allowed.
- 2] The application at Exh.22 be sent to the Ld. Civil Judge Sr. Div. Alibag (the disposed of RCS No.246/2000 dated 30/04/2008) to determine the following issue as per the provisions of Order 22 Rule 5 of the C.P.C. -

Whether the applicant Chandrakant Ramchandra Patil can be considered as legal representative of Smt. Aashalata and if so in what capacity ?

- 3] The Ld. Trial Court is further directed to submit its finding to this Court within 04 months on receipt of the application for its reconsideration.
- 4] Parties to take note of the order and remain present before the Ld. C.J.S.D. Alibag on 06/06/2019.

5] Till receipt of the necessary report from the Ld. CJ.S.D. Alibag the matter be kept in abeyance.

6] Copy of order be sent to the Ld. C.J.S.D.Alibag for information and necessary compliance.

7] Application is accordingly disposed of.

Alibag.

Date :- 16/04/2019.

(R.G.Asmar)

District Judge-1,Raigad-Alibag.

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

Name of the Stenographer	V.S. Patil.
Name of Court	Addl. Sessions Judge, Raigad-Alibag
Date of Dictation	16/04/2019
Order signed by the P.O. on	16/04/2019
Order uploaded on	17/04/2019