

MHRG080000162013



Shri.K.C.Aanchan
Vs.
Shri.Dashrath Nikam & ors.

ORDER BELOW EXHIBIT NO.76 IN
REG. CIVIL SUIT NO.109/2013

The instant application is filed by plaintiff under section 5 of the Code of Civil Procedure to condone the delay which has been caused for bringing the remaining Legal Representatives of deceased defendant no.1.

02. It is contended in the application that, the advocate for plaintiff vide pursis dated 17/04/2017 intimated Court about the death of deceased defendant no.1. Thereafter, the plaintiff has brought on record defendant no.1/1 as legal representative of deceased defendant no.1. According to plaintiff, he is unaware about remaining legal representatives of deceased defendant no.1. He thought that, defendant no.1/1 is the only legal representative of deceased defendant no.1 and therefore he brought her on record. Subsequently, defendant no.1/1 filed pursis below Exh.77 mentioning therein, that proposed legal representatives smt. Tilotama Ahire and Vaishali Kamble are also heirs of deceased defendant no.1. Consequently, he constrained to file present application for condonation of delay caused for bringing remaining legal representatives of deceased defendant no.1.

03. Defendant objected instant application on the ground that, reason mentioned in the application is not sufficient. Delay

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which has been caused is inordinate. Therefore, defendants prayed to reject the application with cost. Despite of service of the notices to remaining proposed legal representatives of deceased defendant, they are remained absent and failed to contest the application. Hence, application is proceeded without their say.

04. I have heard Ld.Adv. for both the parties and gone through the record. After perusal of death extract it appears that, defendant no.1 died on 13/03/2017 and present application is filed on 16/10/2019. As per Article 120 of Limitation Act, plaintiff ought to have brought legal representatives of deceased parties on record within 90 days from the death of respective party.

05. Instant application is filed after the prescribed period of limitation. Thus, it would be incumbent on the part of plaintiff to show sufficient cause as per section 5 of the Limitation Act for the delay which has been caused for bringing legal representatives of deceased defendant. It is the contention of the plaintiff that, previously he brought defendant no. 1/1 on record as she is legal representative of deceased defendant. According to him, he is unaware about other legal representatives of deceased defendant. He got the knowledge about remaining legal representatives when defendant no.1/1 filed pursis on record to that effect.

06. As per order 22, Rule 10-A it is the duty of the pleader to communicate to Court death of the party. In instant case plaintiff came to know about death of deceased defendant no.1 long back. He brought defendant no.1/1 on record but at that time he was unaware

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about other legal representatives and when he got the knowledge about remaining representatives, instantly apply for same.

07. In this respect *Hon'ble Andhrapradesh High Court in the case of Gurjala Bharathi Vs. Bindhya corporation AIR 2007 A.P. 325* held that, the intimation under rule 10-A is only a directory and enabling one so that the parties could be made alert to take appropriate steps. However, the formal intimation as such specially where there is no special provision contemplated to intimate about the particulars of the legal representatives, necessarily it follows that, the other side has to make an inquiry on its own in regard to all such legal representatives and file appropriate application to bring them on record. There is no obligation caste on the part of the advocate appearing on behalf of the deceased parties to intimate or furnish any list of legal representatives of the deceased. After going through the above ratio it appears that, it is bounden duty of the plaintiff to himself inquire about the information of legal representatives. He cannot take the shelter contending that, the advocate for deceased defendant has not furnished information about legal representatives.

08. In present case it is duty of the plaintiff to inquire and get all details of legal representatives of deceased defendant and then bring them on record. Record clearly discloses that, plaintiff without getting proper information about legal representatives previously filed application. But, in order to decide matter on merit, opportunity needs to be given to the plaintiff to bring remaining legal representatives of deceased defendant no. 1 on record. As plaintiff has not given sufficient cause for delay, cost of the application is

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required to be saddled on him. Hence, following order:-

ORDER

01.	Application(Exh.76) is allowed subject to cost of Rs.1000/-. Cost amount be deposited to Taluka legal aid services, Khalapur.
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(Dictated and pronounced in open Court)

Date: 15/01/2021.
Khalapur.

(Shri.P.M.Mane)
Jt.Civil Judge, Junior Division,
Khalapur.