



COMMON ORDER BELOW EXH.57, 59 and 61

[Vandana Balkrushna Patil V. Ranchandra Chindhu Tandel & Ors.]

1. These are the applications for setting aside abatement order and for condonation of delay caused for bringing legal heirs of deceased defendant No.7 and defendant No.8 on record.
2. Defendants have filed their say on application on the applications itself and objected the applications. It is submitted by defendants that, reason for delay is not proper. Hence, defendants prayed for rejection of the application.
3. Heard both the sides.
- 4- As per Order 22, Rule 4 of Code of Civil Procedure, where, defendant dies and right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendants dies and the right to sue survives, then the court on an application made in that behalf, can cause the legal representative of deceased defendant to be made a party. But that application should be filed within limitation but that rule itself states that if there is delay the plaintiff can filed delay condonation application. Any person so made party may make any defence appropriate to his character as legal representative of deceased defendant. Where the application is not made within the time limited by law suit shall abate against the deceased plaintiff. The plaintiff applies after the expiry of the period of limitation for setting aside the abatement order under Sec.5 of

limitation Act on the ground that he had, by reason of such ignorance, sufficient reason for not making such application within time.

5. In the present case the plaintiff filed suit for partition, possession, declaration and permanent injunction. Defendant No.7 died on 18/06/2024 and defendant No.8 died on 27/07/2024. The plaintiff also filed on record along with list exhibit.64 the death certificates about the death of deceased defendant No.7 and 8. These certificates shows that deceased defendant No.7 Mahendra Kashinath Tandel was died on 18/06/2024 and defendant No.8 Madhuri Maruti Sate was died on 27/07/2024.

6. According to section.5 of limitation Act any application other than application under order.21 of C.P.C may be admitted after prescribed period, if the applicant satisfies the court that he had sufficient cause for delay. Article.120 of limitation Act prescribed period of 90 days for adding legal representatives of deceased as a party to the suit. This period is started from date of death of the deceased. In the case in hand defendant No.7 Mahendra Kashinath Tandel was died on 18/06/2024 and defendant No.8 Madhuri Maruti Sate was died on 27/07/2024. The present applications are filed on record on 12/11/2024. Therefore, it shows that there is delay for bringing legal representatives of deceased defendant No.7 and 8 on record. The application for delay condonation is supported by an affidavit stating therein the reason for delay. It appears from that the plaintiff had sufficient cause which prevented him from making an application. Therefore, it is necessary to condone delay and the abatement needs to be set aside.

7. In order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit, it is necessary to allow the applications. The permission is needed to be granted to bring on record legal representative of deceased defendant. It is therefore necessary in the interest of justice to allow the application. But on the other hand it is also necessary to impose cost upon the plaintiff. Hence, the following order.

ORDER

1. The applications below exhibit. 57, 59 and 61 are allowed subject to cost of Rs.300/- given to defendants.
2. The plaintiff is allowed to bring the legal heirs of deceased defendant No.7 Mahendra Kashinath Tandel and defendant No.8 Madhuri Maruti Sate on record within two weeks from the date of order.

Date : 08/04/2025

(Smt. D. S. Khot)
2nd Jt. C.J.J.D, Khalapur.