

ORDER BELOW EXH.55 IN CIV.APP.NO.15/2017
CNR NO.MHRG15-000113-2017

1. The application to condone the delay caused for seeking relief of setting aside abatement caused on failure of appellants to bring on record the legal heirs of deceased respondent Nos.1, 7 and 8. It is contended that respondent Nos.1 & 7 were died in the year 2017 and respondent No.8 in the year 2013. The appellants were not aware about the heirs of deceased respondent. They were required some time to collect correct information about the heirs of deceased respondent. Lastly they have collected the information regarding heirs of the deceased respondents but meanwhile proceeding against them stands abated due to laps of statutory period provided for bringing on record their Lr's. The delay is caused for the same. It is contended that delay is not intentional and deliberate but caused due to lack of knowledge/information about the heirs of deceased respondent. With these contention appellants prayed for condonation of delay caused in bringing on record the Lr's of deceased respondents with consequential relief of setting aside abatement etc.

2. Initially respondent Nos.9 to 14 on record have filed their say to this petition through their advocate on record who opposed for the same stating that delay is not explained properly and at a same time alternatively pray for imposing

cost in case if Court proposes to allow the application in all respect.

3. Today advocate Seema Kadam has filed her appearance on behalf of all Lr's of deceased respondent Nos.1, 7 & 8 and beside this she has already filed her appearance on behalf of other respondents on record too. It is to be noted that the appearance for and on behalf of respondents as well as Lr's of deceased respondent is filed through respondent No.9 in the capacity of their Power of Attorney holder. Today said advocate Seema Kadam put her endorsement on petition of Exh.55 stating that she has no objection to allow the application of Exh.55.

I have perused entries of the death certificates of respondents and found that respondent Nos.1 & 7 are died during course of pendency of the appeal proceeding but respondent No.8 had died much prior to the passing of decree in the suit. In other words decree in original suit was passed on 09/02/2017 and said respondent died on 07/09/2013. However the appeal proceeding are to be treated as continuation of suit therefore death of said respondent No.8 can be treated to have been caused during pendency of the proceeding. Apart from this all respondents on record have no serious objection to condone the delay caused in bringing on record the Lr's of deceased respondents. Further out of 14 respondents only 3 are died and therefore entire proceeding

would not abate. Considering this fact also if Lr's of those deceased respondents are brought on record then no prejudice to be caused to the appellants. Hence I proceed to pass following order.

ORDER

1.	The application is allowed.
2.	Delay caused in bringing on record the Lr's of deceased respondent Nos.1, 7 & 8 is hereby condoned and accordingly abatement is set aside.
3.	Appellants to carry out necessary amendment in cause title and to bring on record the Lr's of deceased respondent Nos.1, 7 & 8 within two weeks from today and provide copy of amended appeal memo to the Court as well as respondents on record.

(Dictated and pronounced in open Court)

Sd/-

Mangaon,
Dated :- 11/11/2021

(N.S.Kole)
District Judge-1 &
Addl. Sessions Judge, Mangaon
Raigad