



Common Order Below exh.28, 30 & 32 in Civil M.A.No.131/2023

1. Application at Exh.28 is filed for taking legal heirs of deceased Respondent No.8 on record, application at Exh.30 for condonation of delay caused for taking legal heirs on record & application at Exh.32 is filed for setting aside abatement.
2. Say of other side was called upon. Other side has left it with discretion of the Court.
3. Heard.
4. Perused record. Points for determination along with my findings thereon are as follows.

Sr. No.	Points	Findings
1	Whether proposed legal heirs of deceased Respondent No.8 are requisite for determining real controversy between the parties?	Yes.
2	Whether delay should be condoned?	Yes.
3	Whether abatement should be set aside?	Yes.
4	What Order?	Applications are allowed.

REASONS

As To Point No.1 to 3

5. As per Applicant, Respondent No.8 has died on 30/10/2015. In support applications, Juned Mohammad Yakub Kureshi has filed affidavits at exh.29, 31 & 33 respectively. Photocopy of



death certificate of Respondent No.8 is not filed on record. Respondents have not disputed about death of Respondent No.8. As per bailiff report at exh.7, Respondent No.8 has died on 30/10/2015 & this information was given to bailiff by Respondent No.4.

6. As per applicant, Tarabai Ganpat Dabhane, Vijay Ganpat Dabhane, Ramakant Vijay Dabhane, Vandana Vasant Rane, Savita Santosh Bholekar & Anita Ganesh Bhoir are legal heirs of deceased Respondent No.8. Application is filed on 21/02/2024. Even if period of Covid-19 is exempted then also there is delay in preferring the application. Reason given for delay is that the applicant was not aware about death of Respondent No.8 & it was difficult to search his legal heirs therefore, application could not be filed in time.
7. After death of a party legal heirs should be brought on record in order to decide real controversy between the parties. If this is not done then it may create further litigation which may create multiplicity of proceeding. Appearance of proposed legal heirs is required while deciding legal issues created in a proceeding.
8. Reason given by applicant is accepted as sufficient cause. It would not be proper to reject application for taking legal heirs on record only on ground of delay. Main application is filed against death person. In the interest of justice delay can be condoned. To avoid technicality abatement can be set aside. Thus, for just decision of the case, it would be proper to take



legal heirs of deceased Respondent No.8 on record. As a result, I pass following order.

ORDER

1. Applications are allowed.
2. Applicant is directed to take legal representatives/heirs of deceased Respondent No.8 (more specifically described at Exh.28) on record in cause title of the application within 14 days from passing of this order.
3. Whatever delay is caused in taking legal representatives/heirs of deceased Respondent No.8 on record is condoned subject to cost of Rs.3,000/- (Rupees Three Thousand Only) to be paid to Respondents proportionately. If cost is not claimed by the Respondents then same be credited in account of District Legal Services Authority, Raigad-Alibag.
4. Abatement of application against Respondent No.8 is set aside.
5. Applicant is directed to file copy of amended application.

Panvel
Dated - 08/08/2024

(S. C. Shinde)
District Judge-3, Panvel,
Dist.-Raigad