

:: Order Below Exh.52 in Regular Civil Appeal
No.478/2019 ::

1. Applicant has filed application for setting aside abatement of deceased Respondent No.5. As per Applicant Respondent No.5 died on 08/11/2019 and due to Covid situation legal heirs were not taken on record. It is further contended that Respondent No.4 is husband of Respondent No.5 who is already on record and to avoid technical defect present application is filed.

2. Respondents have objected this application but the grounds of objection are not elaborated. In say it is mentioned that “strongly objected”.

3. Heard Ld. Advocates for both sides. Perused record. In support of application Applicant/Appellant has filed affidavit. Respondents have not submitted any document.

4. Following points arise for my determination and findings thereon with reasonings are given as follows.

Sr. No.	Points	Reasons
1	Whether there is abatement of Appeal against Respondent No.5 ?	Yes.
2	Whether abatement needs to be set aside ?	Yes.
3	What order ?	Application is allowed

:: REASONS ::

Point No. 1 and 2

5. Ld. Adv. for Applicant has submitted that Respondent No.5 has died on 08/11/2019 and legal heirs of Respondent No.5

are not taken on record. There is a delay in filling this application but taking legal heirs on record is necessary. He further submitted that Respondent No.4 who is husband of Respondent No.5 is on record and to avoid technical defect it is necessary to set aside abatement. Ld. Adv. for Respondents submitted that as there is abatement present application can not be entertained and application is filed without any cause.

6. Order 22 of C.P.C. relates to death, marriage and insolvency of parties. In case of death of plaintiff or defendant it is necessary to bring on record the legal heirs/representatives. If legal heirs/representative are not brought on record then the matter against dead person can not be proceeded. On death of party case automatically abates. If the legal heirs/representative are already on record then by an application, mentioning the same, is to be filed.

7. Respondent No.5 has died in the year 2019 and application is made in the year 2021. On death of Respondent No.5 there is automatic abatement but Respondent No.4 who is heir/representative of Respondent No.5 is on record therefore it is necessary to set aside the automatic abatement. There is no record which shows that the Applicant deliberately avoided for making such application. In the year 2020 Covid was in peak and Court was not properly functioning therefore it may be one of reason for not filling application for setting aside abatement of Respondent No.5. Considering all these aspects I pass following order.

:: ORDER ::

1. Application is allowed.
2. Abatement of Respondent No.5 Usha Shrikrishan Dharap is set aside.
3. Application is disposed of accordingly.

Sd/-

Panvel,
Dated :-16/06/2022

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