

:: Order Below Exh.28 in Regular Civil Appeal
No.479/2019 ::

1. Applicant has filed application for setting aside abatement of deceased Appellant No.2. As per Applicant Appellant No.2 died on 08/11/2019 and due to Covid situation legal heirs were not taken on record. It is further contended that Appellant No.1 is husband of Appellant No.2 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, death is prior to Covid”.

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 Appellant No.2?	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 Appellant No.2 has died on 08/11/2019 and legal heirs of Appellant No.2

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 Appellant No.1 who is husband of Appellant No.2 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. Appellant No.2 has died in the year 2019 and application is made in the year 2021. On death of Appellant No.2 there is automatic abatement but Appellant No.1 who is heir/representative of Appellant No.2 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 Appellant No.2. Considering all these aspects I pass following order.

:: ORDER ::

1. Application is allowed.
2. Abatement of Appellant No.2 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.