

R.C.S. 32/2017

Order below Exh.35 (Delay Condonation Appln.)

This is an application for condonation of delay caused to file abatement set aside application. As per the plaintiff, defendant no. 04 Urmila Laxman Gurav was died on 21/04/2021, defendant no. 05 Vasant Vishram Gurav was died on 29/04/2021 and defendant no. 06 Shantaram Vishram Gurav died on 16/01/2022. After the death of the defendants, there are surviving legal representatives of the deceased defendant and they have to be on record for just the decision of this case. Delay is not intentional hence prayed to allow said application and condone the delay caused.

02. Notice was issued to proposed legal representatives. They filed their reply at Exh. 47 and prayed to allow the application. The defendants have filed their say on the application. As the applicant is not in limitation also the application does not contain cogent and justifiable reason, they prayed to reject this application with costs.

03. Article 120 of the Limitation Act, 1963 stipulates that an application to have the legal representative of a deceased plaintiff or appellant or defendant, or respondent shall be filed within ninety days from the date of death of the said party. If a party fails to do so then the suit gets abated against that party. Article 121 provides that for an application under the Code of Civil Procedure for an order to set aside abatement, the period of limitation is 60 days from the date of abatement. On perusal of copy of the death certificate filed at exh. 32/01, 33 and 34, it appears that defendant no. 04 Urmila Laxman Gurav was died on 21/04/2021, defendant no. 05 Vasant Vishram Gurav was died on 29/04/2021 and defendant no. 06 Shantaram Vishram Gurav died on 16/01/2022. The suit is abated

against them on 22/07/2021, 30/07/2021 and 17/04/2022 respectively. Thereafter the plaintiff has to file an abatement set aside application within 60 days from the date of abatement. But the plaintiff failed to do so.

04. On perusal of the application reason cited for the delay is not justifiable and not supported by any document but it is a well-settled principle of law that this type of application shall be considered liberally. Further, by allowing this application no prejudice will be caused to any party on the contrary it will help to decide the present suit on merit.

05. In given circumstances, in the interest of the justice the delay condonation application needs to be allowed subject to a cost of this application that can be saddled on the applicant while condoning the delay. Hence, I pass the following order:

ORDER

1. Delay condonation application is allowed.
2. Cost of this application is on the applicant.

Date:06/06/2023
Place: Lanja.

(P. R. Bhosale)
Civil Judge Junior Division.
Lanja.

CERTIFICATE

I affirm that the contents of this pdf file Order are same words as per original Order,

Case No : RCS 32 of 2017

Name of the Stenographer: S. D. Chavan

Court Name: Civil & Criminal Court, Lanja, Dist. Ratnagiri.

Date of decision : 06/06/2023.

Order signed by P.O.on : 06/06/2023

Order uploaded on : 06/06/2023.