

Order Below Exh. 308 In R.C.S.No. 13/2005

(Balkrishna Yesaji etc3 Vs. Chandrakant Arolkar etc 7)

CNR:MHSI05-000049-2005

Perused the application filed by plaintiffs and say filed by the defendant No.2A, 1, 3 and 5. In spite of giving sufficient amount of time defendant No. 6 did not file say. Application proceed further without say of defendant no.6. Heard both parties. Perused the record. Matter is pending for hearing.

2) Perused the application filed by plaintiffs. It is an application for setting aside abatement order passed against the deceased defendant No.2 namely Gurunath Atmaram Arolkar on the record. Defendant No.2 died on 29/06/2021. Copy of death extract filed along with list at Exh. 311/1. The application is filed on 17.11.2021 i.e. beyond 90 days from the date of death of above defendant No.2.

3) Advocate for the plaintiffs argued that, there is delay of near about 1 year for bringing the legal heirs of deceased defendant No.2 on record, sufficient cause is mentioned in the application. Hence, application may be allowed.

4) Advocate for the defendant No.2A, 1, 3 and 5 filed their common say on the said application. In their say they contended that application is false & not maintainable. There is delay near about 1 year. But, advocate for the plaintiffs has not given any sufficient cause for delay. Hence, application be rejected.

5) Perusal of record shows that application is well

supported by an affidavit. It appears that the plaintiffs have not given sufficient cause which prevented them from making an application within stipulated time. But, in order to enable the court to effectively and completely adjudicate upon and settle all the questions involved in the suit, It is necessary to allow the application to bring on record legal representatives of deceased defendant No.2. Legal representative of deceased defendant No.2 is not already present in the suit proceeding. It is therefore, necessary to condone the delay. Hence, It is necessary in the interest of justice to allow the application. However, it is necessary to compensate the delay caused to the proceeding as, matter is old. Hence, it will be proper and just to allow the application subject to cost. Hence, I pass the following order -

ORDER

1. The application (Exhibit 308) is allowed with subject to cost of Rs. 200/- each. Plaintiffs shall pay cost amount of Rs.200/- to the defendant No. 2A, 1, 3 and 5 each.
2. The abatement order passed against deceased defendant No.2 is hereby set aside.
3. Parties to take note.

Vengurla.

Date. 08.08.2022

(K.K.Patil)

Civil Judge (J.D.), Vengurla.