



CNR No. MHSI070000112010

**Order passed below Exh. No.263
(I.A. No.7/2024) in R.C.S. No.35/2010**

This is an application preferred by the plaintiff is to condone the delay to file an application to set aside abatement.

2. The plaintiff has contended that, on 05/05/2023, the defendant no.5 namely Suhasini Prabhakar Malye died. The plaintiff has further contended that the legal heirs of deceased defendant no.5 should have been brought within the period of 90 days. However, the plaintiff resided at Mumbai. The plaintiff is an old age lady and she was ill. Therefore, she was unable to travel from Mumbai. Therefore, she could not prefer an application within the prescribed period of limitation. Therefore, delay of 01 months and 05 days is caused to bring on record legal heirs of deceased defendant no.5. The said delay was not caused intentionally. Therefore, it is prayed that delay of 01 months and 05 days be condoned.

3. The defendant no.1-A-1, 1-A-2, 1-B and 1-C have resisted the application by filing say on overleaf of the application. It is contended that the the reason assigned are false. The application is preferred delayedly. Therefore, prayed to reject the application.

4. Heard both the sides. Both the parties have reiterated the contents of application and say. As per the contents of the application, the defendant no.5 died on 05/05/2023. As per Article 120 of the Limitation Act, 1963, the plaintiff should have preferred the application to bring on legal representative of deceased defendant no.5 on record within the period of 90 days i.e. on or before 03/08/2023. However, the plaintiff has failed to do so. Therefore, the suit automatically stands abated against the defendant no.5. As per Article 121 of the Limitation Act, the plaintiff ought to have preferred application to set aside an abatement within 60 day from the date of abatement i.e. on or before 02/10/2023. However, the plaintiff has preferred the said application on 11/09/2023. Thus, there is no delay is caused to file an application for setting aside abatement. Hence, the application is liable to be filed. Accordingly, I pass following order.

ORDER

The application at Exh.263 stands filed.

(Pronounced and dictated in open Court.)

sd/-

Place - Malvan
Date - 04/01/2024

Mahesh R. Devkate
Jt. Civil Judge Jr.Dn., Malvan.