



CNR No. MHSI070000112010

**Order passed below Exh. No.264
(I.A. No.8/2024) in R.C.S. No.35/2010**

This is an application preferred by the plaintiff to set aside abatement order passed against deceased defendant no.5.

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. Consequently, the suit was abated against the defendant no.5. It is necessary to brought on record legal heirs of deceased defendant no.5, therefore, prayed to set aside abatement order passed against defendant no.5. 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.

3. Heard both the parties. 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. The application for setting aside abatement is preferred within limitation. The defendant no.5 died, but right to sue is survived. The valuable rights of the parties are involved in the present suit. In order to decide the suit on merit, it is necessary to set aside abatement order passed against defendant no.5. Therefore, I pass following order.

ORDER

1. The application at **Exh.264** is hereby allowed and abatement against the defendant no.5 is hereby set aside on payment of Costs of Rs.100/- .
2. The plaintiff shall pay Costs amount to the defendant no.1-A-1, 1-A-2, 1-B and 1-C.

(Pronounced and dictated in open Court.)

sd/-

Place - Malvan
Date - 04/01/2024

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