



CNR No. MHSI070000112010
Order passed below Exh. No.260
(I.A. No.4/2024) 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 02/03/2023, the defendant no.4 Sudhakar Laxman Bhogaonkar died. The plaintiff has further contended that the legal heirs of deceased defendant no.4 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 3 months and 11 days is caused to bring on record legal heirs of deceased defendant no.4. The said delay was not caused intentionally. Therefore, it is prayed that delay of 3 months and 11 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.4 died on 02/03/2023. 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.4 on record within the period of 90 days

i.e. on or before 31/05/2023. However, the plaintiff has failed to do so. Therefore, the suit automatically stands abated against the defendant no.4. 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 30/07/2023. However, the plaintiff has preferred the said application on 11/09/2023. Thus, delay of delay of 01 months and 12 days is caused to prefer an application for setting aside of abatement.

5. The plaintiff assigned the reasons for said delay is that the plaintiff resided at Mumbai. Due to her old age and sickness, she was unable to travel from Mumbai. So delay is caused to prefer the application. In support of the said reasons the defendant No.10 has attached his affidavit with the application. It is well settled that while condoning the delay the court has to deal the application liberally. The reason assigned by the plaintiff is appeared to be bonafide and reasonable. Therefore, I am of considered opinion that delay of 01 months and 12 days needs to be condoned on payment of Costs by the plaintiff to the defendants. Hence, I pass following order.

ORDER

1. The application at **Exh.260** is hereby allowed and delay of 01 months and 12 days is condoned on payment of Costs of Rs.200/- by the plaintiff.
2. The plaintiff shall pay Costs amount to the defendants.

(Pronounced and dictated in open Court.)

sd/-

Place - Malvan
Date - 04/01/2024

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