



CNR No. MHSI070000112010

Order passed below Exh. No.261

(I.A. No.5/2024) 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.4 .

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. Consequently, the suit was abated against the defendant no.4. It is necessary to brought on record legal heirs of deceased defendant no.4, therefore, prayed to set aside abatement order passed against defendant no.4. 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. Perused the order passed below Exh.260. The plaintiff should have preferred this application before 30/07/2023. However, the plaintiff has preferred this application on 11/09/2023. The application is

preferred after 01 months and 12 days, after the lapse of period of limitation. The application at Exh.260 is allowed and delay of 01 months and 12 days is already condoned. The defendant no.4 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.4. Therefore, I pass following order.

ORDER

1. The application at Exh.261 is hereby allowed and abatement against the defendant no.4 is hereby set aside on payment of Costs of Rs.100/-.
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.