



CNR No. MHSI070000642016
Order passed below Exh. No. 166
(I.A.No.08/2025) in R.C.S. No. 11/2016

This is an application preferred by the plaintiff no. 1-B to condone the delay to file an application to set aside abatement.

2. The plaintiff no. 1-B has contended that, on 18/02/2018 the defendant no. 4 Bhaskar Narayan Bidaye died. The plaintiff was not aware of death of defendant no. 4. He came to know this fact when summons returned with an endorsement that defendant no. 4 died. Therefore, delay of 5 years was caused to prefer the application. The said delay was not caused intentionally. Therefore, it is prayed that delay be condoned. The defendants have resisted the application by filing say on overleaf of the application. It is contended that necessary order may be passed subject to Costs.

3. Heard the both the sides. Both the parties have reiterated the contents of application and say. As per the contents of the application, defendant no. 4 died on 18/02/2018. As per Article 120 of the Limitation Act, 1963, the plaintiff should have preferred the application to bring legal heirs of deceased defendant no. 4 on record within the period of 90 days i.e. on or before 19/05/2018. However, the plaintiff has failed to do so. Therefore, the suit automatically stands abated without the formal order of the Court. 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 18/07/2018. The present application is preferred on

08/11/2024. Thus, delay of 06 years 03 months and 21 days is caused to prefer an application for setting aside of abatement.

4. The plaintiff has assigned the reasons for said delay is that he was not aware of the death of defendant no. 4, therefore, delay was caused to prefer the application. In support of the said reasons the plaintiff no. 1-B Prakash Krishna Bidaye has attached his affidavit. 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 06 years, 03 months and 21 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.166 is hereby allowed and delay of 06 years, 03 months and 21 days is condoned on payment of Costs of Rs. 500/- by the plaintiff.
2. The Costs amount be paid to the defendants.

Pronounced and dictated in open Court.

Date - 04/01/2025

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