



CNR No. MHSI070000352017

Order passed below Exh. No.32
(I.A. No.2/2022) in R.C.S. No.12/2017

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

2. The plaintiff has contended that, on 03/05/2021 the defendant Indranil Bharat Naringrekar died. The plaintiff has contended that he is not aware of legal provision. Moreover, due to spread of COVID-19 and strike of State Transport, he could not meet his advocate and informed regarding death of deceased defendant. Consequently, delay of 175 days is caused to prefer the application. The said delay was not caused intentionally. Therefore, it is prayed that delay be condoned.

3. My learned predecessor has issued notices to the legal heirs of deceased defendant. In response to the notice proposed defendants no.1-A to 1-D were appeared and resisted the application. It is contended that the reason assigned by the plaintiff are not bonafide and satisfactory. The application is only preferred to prolong the matter. Therefore, prayed to reject the application.

4. Heard the learned advocate for the plaintiff and learned advocate for the proposed defendants no.1-A to 1-D. As per the contents of the application, the defendant died on 03/05/2021. As per Article 120 of the Limitation Act, 1963, the

plaintiff should have preferred the application to bring on legal representative of deceased on record within the period of 90 days i.e. on or before 01/08/2021. However, the plaintiff has failed to do so. However, the plaintiff has preferred the said application on 22/02/2022.

5. The Hon'ble Apex Court **In Re: Cognizance for extention of limitation Mis.Appl.No.29/2022, dated 10/01/2022** excluded period of limitation prescribed under in general or special laws for the period 15/03/2020 to 28/02/2022 due to surge of COVID-19. In view of the above direction period of 09/09/2021 to 28/02/2022 needs to be excluded while computing period of limitation. The Hon'ble Apex Court in the aforesaid authority has also directed that where the limitation would have expired during the period between 15/03/2020 to 28/02/2022, all the persons shall have limitation period of 90 days from 01/03/2022. The application to bring on records to legal heirs of the deceased defendant is filed before expiration of 90 days limitation. Therefore, there is no delay is caused to prefer the application. Consequently, suit was not abated against the defendant. Hence, the application is liable to be filed. Accordingly, I pass following order.

ORDER

The application at **Exh.32** stands filed.

(Pronounced and dictated in open Court.)

Place - Malvan
Date - 25/01/2023

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