

CNR No. MHSI070005692022

**Order passed below Exh. No.43**
(I.A. No.5/2024) in R.C.S. No. 113/2022

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This is an application preferred by the plaintiffs to set aside abatement order passed against deceased defendant no.1.

2. The plaintiffs have contended that, on 06/08/2023 the defendant no. 1 died. The plaintiffs have contended that due to their household difficulties they could not brought legal heirs of deceased defendant no. 1 on record within stipulated time. Consequently suit was abated against the defendant no. 1. The legal heirs of deceased defendant no. 1 are necessary to bring on record. Therefore, prayed to set aside abatement order passed against deceased defendant no. 1. The defendants have resisted the application by filing say on overleaf of the application. It is contended that the reasons are not satisfactory. Inordinate delay is caused to file the application. Hence, prayed to reject the application.

3. Heard both the parties. Perused the order passed below Exh.42. The plaintiffs should have preferred this application before 03/01/2024. However, the plaintiffs have preferred this application on 24/06/2024. The application is preferred after 5 months and 21 days, after the lapse of period of limitation. The application at Exh. 42 is allowed and delay of 5

months and 21 days is already condoned. The defendant no.1 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.1. Therefore, I pass following order.

ORDER

1. The application at **Exh. 43** is hereby allowed and abatement against the defendant no.1 is hereby set aside on payment of Costs of Rs.200/-.
2. The plaintiffs shall pay Costs amount to the defendants.

(Pronounced and dictated in open Court.)

Date - 23/07/2024

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