



CNR No. MHSI070000762015
Order passed below Exh. No.68
in R.C.S. No. 18/2015

The plaintiff has sought to set aside an abatement of suit against defendant No. 1. It is claimed that defendant No. 1 died on 23/03/2023 and as the LRs of deceased defendant No. 1 were not brought on record in prescribed time. The proceeding was automatically abated against him. The application is supported with an affidavit.

2. The defendant no.1(a) has objected the application by filing say on overleaf of the application. It is contended that the reasons advanced therein are not satisfactory. The plaintiff has filed present application belated stage. Therefore, prayed to reject the application.

3. Perused the application, say and record. Heard both sides.

4. On perusal of record it is clear that defendant no.1 has expired on 23/03/2023 and as a matter of record, the LRs were not taken on record within prescribed time, as a result the proceeding was abated. As per provision of Order XXII Rule 4(2) of CPC, it may be noted that the plaintiff had sought condonation of delay in taking LRs on record vide application (Exh.69) which is allowed by the reasons stated therein. Needless to mention, since it is a suit in respect of immovable property, the cause of action

survives after the death of defendant no.1. In the circumstance, the abatement is required to be set aside. Refusing the prayer would certainly lead to multiplicity of litigations. On the contrary, allowing the application would help to decide the matter on merits. However, inconvenience caused to the defendant can be compensated by imposing costs upon the plaintiff. Hence, the order :

	ORDER
1.	The application Exh. 68 is allowed, subject to payment of costs of Rs. 200/- to be paid by the plaintiff to the defendant on or before the next date.
2.	On payment of costs, the abatement of suit against defendant no.1 shall be set aside.
	(Pronounced and dictated in open Court.)

Place : Malvan
Date : 09/06/2026

Sd/-
M.K.Fakih
Civil Judge (J.D.) Malvan.