

**COMMON ORDER BELOW EXH NOS. 343 to 345 IN REG.
CIVIL SUIT NO. 43/2012**

Application Exh. 343 is filed by plaintiff for condoning delay to bring on record the legal heir of deceased defendant No.4, application Exh. 344 for setting aside the abatement order passed on account of failure to bring on record the legal heir of deceased defendant No.4, application Exh. 345 is for seeking permission to bring on record the legal heir of deceased defendant No.4. Notice was issued to the proposed legal heir of deceased defendant No.4. Record shows that the said notice was served on the proposed legal heir of deceased defendant No.4. Though she appeared through her advocate but failed to file say. Therefore application is proceeded without say of the proposed legal heir of deceased defendant No.4. Heard Ld. counsel appearing for plaintiff.

02. I have gone through the record of the case as well as heard Ld. counsel appearing for plaintiff at length .

03. It is admitted facts that defendant No. 4 has died on 14/08/2015 and his legal heir is not brought on record by the plaintiff within the prescribed period of 90 days. Therefore, on the expiry of 90 days from the date of death of defendant No.4 the suit stood abated against the defendant No.4. Also it is not in dispute that the application for bringing legal heir is filed after the lapse of prescribed period. It is not a dispute that deceased defendant No. 4 Sudhakar Anant Mhaskar is survived by legal heir as mentioned in the application Exh. 345. Also the fact that the right to sue is existing is not denied by the proposed legal heir. Considering the said fact coupled with the observations of Hon'ble Apex Court in catena of judgments, in my opinion liberal approach has to be taken in the instant matter by affording opportunity to the plaintiff to bring the legal heir of deceased

defendant No.4 on record by setting aside the abatement order and by condoning the delay cause in filing the application within the prescribed period. Also, the said opportunity needs to be given for the purpose of bilateral hearing and for adjudicating the dispute between the parties once and for all. Hence I hold that application Exh. 343 to 345 deserve to be allowed. Hence I proceed to pass following order

Order

1. Applications Exh. 343 to 345 are allowed. The abatement of suit against the defendant No.4 stands set aside subject to combine costs of Rs. 300/- to be deposited in Court as a condition precedent.
2. Delay in bringing the legal heir of defendant No.4 on record is condoned and the legal heir as mentioned in the application Exh. 345 are taken on record in place of deceased defendant No. 4 Sudhakar Anant Mhaskar.
3. Plaintiff to carry out the necessary impleadment of legal heir of defendant No. 4 within 14 days from this order and also directed to file copy of plaint exh. 1 after impleading legal heir of defendant No.4.
4. Copy of this order be attached to Exh. 343 to 345

Dictated on dais and pronounced in open Court.

Date: 24/06/2016

(P.K.Nardele.)
Civil Judge, Jr. Dn. Malvan.