

**COMMON ORDER BELOW EXH NOS. 363 to 365 IN REG. CIVIL
SUIT NO. 43/2012**

Application Exh. 363 is filed by plaintiff for condoning delay to bring on record the legal heirs of deceased defendant No.5, application Exh. 364 for setting aside the abatement order passed on account of failure to bring on record the legal heirs of deceased defendant No.5, application Exh. 365 is for seeking permission to bring on record the legal heirs of deceased defendant No.5. Notices were issued to the proposed legal heirs of deceased defendant No.5. Record shows that the said notices were served on the proposed legal heirs of deceased defendant No.5. However they failed to appear in Court and file their say to the above mentioned applications. 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. 5 has died on 30/06/2005 and his legal heirs are 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.5 the suit stood abated against the defendant No.5. Also it is not in dispute that the application for bringing legal heirs is filed after the lapse of prescribed period. It is not a dispute that deceased defendant No. 5 Suryakant Sitaram Mhaskar is survived by legal heirs as mentioned in the application Exh. 365. Also the fact that the right to sue is existing is not denied by the proposed legal heirs. 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 heirs of deceased defendant No.5 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. 363 to 365 deserve to be allowed. Hence I proceed to pass following order

Order

1. Applications Exh. 363 to 365 are allowed. The abatement of suit against the defendant No.5 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 heirs of defendant No.5 on record is condoned and the legal heirs as mentioned in the application Exh. 365 are taken on record in place of deceased defendant No. 5 Suryakant Sitaram Mhaskar.
3. Plaintiff to carry out the necessary impleadment of legal heirs of defendant No.5 within 14 days from this order and also directed to file copy of plaint exh. 1 after impleading legal heirs of defendant No.5.
4. Copy of this order be attached to Exh. 363 to 365

Dictated on dais and pronounced in open Court.

Date: 24/06/2016

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