



CNR No. MHSI070001412020
Order passed below Exh. No. 88
in R.C.S. No. 20/2020

The application is filed by the plaintiff for condonation of delay in filing application for taking legal representatives of deceased defendant no. 50 on record.

2) The defendants have filed their say on the application itself and prayed necessary order may be passed.

3) Perused record. Heard both sides.

4) It appears from the perusal of the record that defendant No.50 died on 21/05/2010 i.e. prior to institution of the suit. It will be apt to refer to the judgment of the Hon'ble Supreme Court in **ZALAVADIYA Versus ZALAVADIYA (2017) 9 Supreme Court Cases 700**, in which it is held as under;

16. In the matter on hand, though the trial court had rightly dismissed the application under Order 22 Rule 4 of the Code as not maintainable at an earlier point of time, in our considered opinion, it needs to be mentioned that the trial court at that point of time itself could have treated the said application filed under Order 22 Rule 4 of the Code as one filed under Order 1 Rule 10 CPC, in order to do justice between the parties. Merely because of the non-mentioning of the correct provision as Order 1 Rule 10 of the Code at the initial stage by the advocate for the plaintiff, the parties should not be made to suffer. It is by now well settled that a mere wrong mention of the provision in the application would not prohibit a party to the litigation from getting justice. Ultimately, the courts are meant to do justice and not to decide the applications based on technicalities. The provision under Order 1 Rule 10

CPC speaks about judicial discretion of the Court to strike out or add parties at any stage of the suit. It can strike out any party who is improperly joined, it can add anyone as a plaintiff or defendant if it finds that such person is a necessary or proper party. The Court under Order 1 Rule 10(2) of the Code will of course act according to reason and fair play and not according to whims and caprice.

5) From the above citation it is crystal clear that even when a person is dead prior to institution of the suit his legal representative can be brought on record under *Order 1 Rule 10 CPC*. Though this application is made along with application (Exh.90) which is under *Order 22 Rule 4 of the Code*, still application (Exh.90) can be treated under *Order 1 Rule 10 CPC*.

6) As the application (Exh.90) is treated as application under *Order 1 Rule 10 CPC*, therefore, in true sense, there is no need to file an application for condonation of delay. Therefore, this application is not maintainable.

7) From the above discussion the application is not maintainable. Therefore liable to be rejected. Hence, the following order is passed,

ORDER

1. The application **Exh.88** is rejected.

2. No order as to Costs.

Pronounced and dictated in open Court.

Sd/-

M.K.Fakih

Civil Judge Jr.Dn., Malvan.

Date - 06/05/2025