

**CNR No. MHSI070002422018****Order passed below Exh. No. 23
(I.A. No. 1/2024) in R.C.S. No. 41/2018**

This is an application preferred by the plaintiff to condone the delay to file an application to set aside abatement.

2. The plaintiff has contended that, on 17/02/2023 the sole defendant Rama Mula Phale died. The plaintiff could not get names of the heirs of deceased defendant. Therefore, the delay of six months is caused to prefer the application. The said delay was not caused intentionally. Therefore, it is prayed that delay be condoned. The notice was issued to legal heirs of deceased defendant. The proposed legal heirs 1-A, 1-C and 1-D were served but they have not appeared before the court. Therefore, the application is proceed without their say. Proposed legal heir no. 1-B has resisted the application by filing say on overleaf of the application. It is contended that no satisfactory reasons are assigned. Therefore, prayed to reject the application.

3. Heard the both the sides. Both the parties have reiterated the contents of application and say. As per the contents of the application, defendant died on 17/02/2023. As per Article 120 of the Limitation Act, 1963, the applicants should have preferred the application to bring legal heirs of deceased defendant on record within the period of 90 days i.e. on or before 18/05/2023. However, the plaintiff has failed to do so. Therefore, the suit automatically stands abated without the formal order of the Court. As per Article 121 of the Limitation Act, the plaintiff ought to have preferred application to set aside an abatement within 60 day from the date of abatement i.e. on or before

17/07/2023. The present application is preferred on 13/12/2023. Thus, delay of 04 months and 27 days is caused to prefer an application for setting aside of abatement.

4. The plaintiff has assigned the reasons for said delay is that he could not get names of heirs of deceased defendant, therefore, delay was caused to prefer the application. In support of the said reasons the plaintiff has attached affidavit of trustee namely Prabhanand Dhanaji Dalvi with the application. It is well settled that while condoning the delay the Court has to deal the application liberally. The reason assigned by the plaintiff is appeared to be bonafide and reasonable. Therefore, I am of considered opinion that delay of 04 months and 27 days needs to be condoned on payment of Costs by the plaintiff to the proposed defendant no. 1-A to 1-D. Hence, I pass following order.

ORDER

1. The application at **Exh. 23** is hereby allowed and delay of 04 months and 27 days is condoned on payment of Costs of Rs. 200/- by the plaintiff.
2. The Costs amount be paid to the proposed defendant no. 1-A to 1-D.

Pronounced and dictated in open Court.

Date - 17/08/2024

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