



CNR No. MHSI070002422018

**Order passed below Exh. No. 23
(I.A. No. 2/2024) in R.C.S. No. 41/2018**

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This is an application preferred by the plaintiff to set aside abatement order passed against deceased sole defendant.

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. Consequently, suit was abated. The legal heir of deceased defendant are necessary to bring on record. Therefore, prayed to set aside abatement order. 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 both the parties. Perused the order passed below **Exh. 23**. The plaintiff should have preferred this application before 17/07/2023. However, the plaintiff has preferred this application on 13/12/2023. The application is preferred after 04 months and 27 days, after the lapse of period of limitation. The application at **Exh. 23** is allowed and delay of 04 months and 27 days is already condoned. The defendant died, but, right to sue is survived. The valuable rights of the parties are

involved in the present suit. In order to decide the suit on merit, it is necessary to set aside abatement order passed against sole defendant. Therefore, I pass following order.

ORDER

1. The application at **Exh. 24** is hereby allowed and abatement against sole defendant is hereby set aside on payment of Costs of Rs.200/-.
2. The plaintiff shall pay Costs amount 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.