

**CNR No. MHSI070003812010****Order passed below Exh. No. 309
(I.A. No.2/2023) in R.C.S. No.
146/2010**

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 21/08/2022 the defendant no.1 Vinayak Suryaji Prabhugaonkar died. The plaintiff is no knowledge about the death of deceased defendant no. 1. Therefore, delay was caused to file the present application. The said delay was not caused intentionally. Therefore, it is prayed that delay be condoned. The defendants have filed their say overleaf the application and contended that the application is false and frivolous. The reasons assigned in the application is not satisfactory. Hence, 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, the defendant no.1 died on 21/08/2022. As per Article 120 of the Limitation Act, 1963, the plaintiff should have preferred the application to bring on legal representative of deceased defendant no.1 on record within the period of 90 days i.e. on or before 19/11/2022. However, the plaintiff has failed to do so. Therefore, the suit automatically stands abated against the defendant no.1 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 18/01/2023. The present application is preferred on 24/08/2023. Thus, delay of 7

months and 06 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 was no knowledge about the death of deceased defendant no. 1, he could not move application. In support of the said reasons the plaintiff Subhash Krishna Parab has attached his affidavit 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 07 months and 06 days in respect of defendant no. 1 needs to be condoned on payment of Costs by the plaintiff to the defendants. Hence, I pass following order.

ORDER

1. The application at **Exh. 309** is hereby allowed and delay of 07 months 06 days in respect of defendant no. 1 is condoned on payment of Costs of Rs. 500/- by the plaintiff no. 1B.
2. The Costs amount be paid to the defendants.
3. Pronounced and dictated in open Court.

Date - 12/07/2024

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