



CNR No. MHSI070003812010

Order passed below Exh. No. 310
(I.A. No.3/2023) in R.C.S. No. 146/2010

This is an application preferred by the plaintiff to set aside abatement order passed against deceased defendant no.1.

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, the plaintiff could not file the application within limitation. Consequently suit was abated against the defendant no. 1. The legal heir of deceased defendant no. 1 are necessary to bring on record. Therefore, prayed to set aside abatement order passed against deceased defendant no. 1. The defendants have objected the application. 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 both the parties. Perused the order passed below Exh.309. The plaintiff should have preferred this application before 20/09/2021 in respect of defendant no. 1. However, the plaintiff has preferred this application on 24/08/2023. The application is preferred after 07 months 06 days, after the lapse of period of limitation. The application at Exh. 309 is allowed and delay of 07 months 06 days is already condoned. The defendant no.1 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 defendant no.6. Therefore, I pass following order.

ORDER

1. The application at Exh. 310 is hereby allowed and abatement against the defendant no.1 is hereby set aside on payment of Costs of Rs.200/-.
2. The plaintiff shall pay Costs amount to the defendants.

(Pronounced and dictated in open Court.)

Date - 12/07/2024

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