



CNR No. MHSI070004672015
Order passed below Exh. No. 45
(I.A. No.3/2024) in R.C.S. No. 112/2015

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 20/08/2020 the defendant no. 1 namely Devraj Tatu Paradkar died. The plaintiff has also contended that he is 84 years old person and suffering from various ailments. Due to spread of Covid-19, he was unable to collect the necessary document and could not meet his advocate. Therefore, he could not bring legal heir of deceased defendant no. 1 on record within stipulated period. The said delay was not caused intentionally. Therefore, it is prayed that delay be condoned. The defendants have resisted the application by filing say overleaf of the application. They have contended that present application is filed delayed. No satisfactory reasons are assigned for the said delay. Therefore, prayed to reject the application with Costs.

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 20/08/2020. 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 20/11/2020. 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.

4. The Hon'ble Apex Court **In Re: Cognizance for extention of limitation Mis.Appl.No.29/2022, dated 10/01/2022** excluded period of limitation prescribed under in general or special laws for the period 15/03/2020 to 28/02/2022 due to surge of COVID-19. In view of the above direction period of 20/11/2020 to 28/02/2022 needs to be excluded while computing period of limitation. It was also directed by the Apex court that that if the limitation is expired in the aforesaid period the application should be preferred within three months i.e. 31/05/2022. Therefore, the plaintiff should have preferred the application to bring on record legal heir of deceased defendant on or before 31/05/2022. However, the plaintiff failed to do so. Therefore, suit was abated without 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 30/07/2022. The present application is preferred on 01/07/2024. Thus, delay of 01 year, 11 months and 02 days is caused to prefer an application for setting aside of abatement.

5. The plaintiff has assigned the reasons for said delay is that the plaintiff was he is 84 years old person and suffering from various ailments. Due to spread of Covid-19, he was unable to collect the necessary document and could not meet his advocate, therefore, he could not move the application within stipulated period. In support of the said reasons the plaintiff

Dnyandev Tukaram Kandalgavkar 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 01 years 11 months and 02 days 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. 46** is hereby allowed and delay of 01 years 11 months and 02 is condoned on payment of Costs of Rs. 500/- by the plaintiff.
2. The Costs amount be paid to the defendants.

Pronounced and dictated in open Court.

Date - 03/09/2024

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