



CNR No. MHSI070004792018

Order passed below Exh. No.76

(I.A. No.14/2024) in R.C.S. No.94/2018

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 01/09/2023, the defendant no.1 namely Waman Meghasham Samant died. The plaintiff has contended that the plaintiff made an inquiry regarding deceased defendant no.1, but no one was ready to inform name and address of the legal heirs of deceased defendant no.1. Therefore, delay of 02 days is caused to prefer the application. Consequently, the suit was abated against the defendant no.1. It is necessary to brought on record legal heirs of deceased defendant no.1, therefore, prayed to set aside abatement order passed against defendant no.1. The defendants no.1, 4 and 6 have resisted the application by filing say on overleaf of the application. It is contended that the application is filed after 2 months 2 days. However, the plaintiff has contended that only 2 days delay is caused. Therefore, prayed to reject the application.

3. Heard both parties. Perused the order passed below Exh.77. The plaintiff should have preferred this application before 29/01/2024. However, the plaintiff has preferred this application on 30/01/2024. The application is preferred after 01 day, after the lapse of period of limitation. The application at Exh.77 is allowed and delay of 01 day 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.1. Therefore, I pass following order.

ORDER

1. The application at Exh.76 is hereby allowed and abatement against the defendant no.1 is hereby set aside on payment of Costs of Rs.100/-.
2. The plaintiff shall pay Costs amount to the defendant no.1, 4 and 6.

(Pronounced and dictated in open Court.)

sd/-

Place - Malvan
Date - 05/03/2024

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