



CNR No. MHSI070004792018

**Order passed below Exh. No.77
(I.A. No.15/2024) in R.C.S. No.94/2018**

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 01/09/2023, the defendant no.1 namely Waman Meghasham Samant died. The plaintiff has contended that the plaintiff made an inquiry regarding the 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. The said delay was not caused intentionally. Therefore, it is prayed that delay of 02 days be condoned. 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 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 01/09/2023. 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 30/11/2023. However, the plaintiff has failed to do so. Therefore, the suit automatically stands abated against the

defendant no.1. As per Article 121 of the Limitation Act, the plaintiff ought to have preferred application to set aside an abatement within 60 days from the date of abatement i.e. on or before 29/01/2024. However, the plaintiff has preferred the said application on 30/01/2024. Thus, delay of delay of 01 day is caused to prefer an application for setting aside of abatement.

4. The plaintiff assigned the reasons for said delay is that no one was ready to inform name and addresses of legal heirs of deceased defendant no.1, therefore, delay was caused. In support of the said reasons, the plaintiff 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. Moreover, the delay is not too inordinate. Therefore, I am of considered opinion that delay of 01 day 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.77 is hereby allowed and delay of 01 day is condoned on payment of Costs of Rs.100/- by the plaintiff
2. The plaintiff shall pay Costs amount to the defendants 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.