



CNR No. MHSI070004792018

**Order passed below Exh. No.64  
(I.A. No.8/2023) 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 07/12/2020 the defendant no.2 Ratnprabha Ramesh Naik died. It is contended that name and addresses of the legal heirs could not be known to the plaintiff. The plaintiff could not get name and address of the legal heirs of deceased defendant. Therefore, delay of 01 year and 263 days was caused to prefer the application. The said delay was not caused intentionally. Therefore, it is prayed that delay of 01 year and 263 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 reasons assigned by the plaintiff are not satisfactory. Therefore, 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.2 died on 07/12/2020. 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.2 on record within the period of 90 days i.e. on or before 07/03/2021. Therefore, the suit automatically stands abated against the defendant no.2 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 06/05/2021. However, the plaintiff has preferred the said application on 24/01/2023. Thus, delay of 01 year 08 months and 18 days is caused to prefer an application for setting aside of abatement.

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 09/09/2021 to 28/02/2022 needs to be excluded while computing period of limitation. The Hon'ble Apex Court in the aforesaid authority has also directed that where the limitation would have expired during the period between 15/03/2020 to 28/02/2022, all the persons shall have limitation period of 90 days from 01/03/2022. In view of the aforesaid direction the plaintiff would have filed the application for setting aside abatement on or before 30/05/2022. The application is preferred after 07 months and 25 days after the lapse of period of limitation.

5. The plaintiff has assigned the reasons for said delay is that the plaintiff could not get name and address of the legal heirs of deceased defendant. 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 reasons assigned by the plaintiff is

appeared to be bonafide and reasonable. Therefore, I am of considered opinion that delay of 07 months and 25 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.64** is hereby allowed and delay of 07 months and 25 days is condoned on payment of Costs of Rs.300/- by the plaintiff.
2. The Costs amount be paid to the defendants.

(Pronounced and dictated in open Court.)

Place - Malvan  
Date - 01/08/2023

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