

COMMON ORDER PASSED BELOW EXH.NO. 59 to 61 IN R.C.S. NO.
17/2017.

The present applications are filed by plaintiff for bringing legal heirs of defendant No. 21 on record by condoned delay. The applications are resisted by the defendants by filing say.

2. Perused the recored. Heard both sides.

3. Date of death of defendant No. 21 is 07/11/2016 and the application is filed on 23/10/2017 i.e. beyond 90 days from the date of death of plaintiff No.21.

4. The applications are supported by an affidavit stating that defendant no. 21 was resides and died at Mumbai, the information of death of defendant No. 21 is not informed within earlier period. Plaintiff has filed death certificate of defendant No. 21 alongwith Exh. No. 57. The death certificate goes to show that, defendant No. 21 is died on 07/11/2016 at Mumbai. Due to non availability of information plaintiff could not file application for bringing legal heirs of deceased defendant No. 21 within stipulated period. Therefore he could not approach in the Court within stipulated period. According to him he had sufficient cause which prevented he for making application for bringing legal heirs on record. Therefore the delay needs to condon.

5. The applications are objected by defendant No. 6 to 10 and 12 by filing say contended that, applications is false and frivolous. Plaintiff has deliberately cause delay in present matter. No necessary document is annexed and furnished with the said application. Hence applications may kindly be rejected. If at all Hon'ble Court may thinks proper to allow the

said applications, heavy cost may be imposed on plaintiff.

6. It is pertinent to note that plaintiff has filed death certificate of defendant No. 21. The reason submitted by the plaintiff regarding non information of the death of defendant No.21 is not proper. The defendant No. 21 is survived by sons. However, it is well settled by a catena of decisions of Hon'ble Apex court as well as High Court that while setting aside abatement order liberal approach is to be adopted and delay is to be condoned. In order to enable the court to effectively and completely adjudicate upon and settle all the questions involved in the suit, it is necessary to allow the application to bring on record the legal representative of deceased defendant No. 21, as the right to sue is survived. Hence I proceed to pass the following order.

ORDER

1. The applications are allowed.
2. The delay for bringing legal heirs of defendant No. 21 is condoned.
3. Legal heirs of deceased defendant No. 21 are permitted to join as defendants subject to cost of Rs. 300/- to the defendants for causing delay.

Date : 04/01/2018

(Salim A. Jamadar)
Civil Judge J.D. Kankawali.