

(CNR NO.MHSNO-40006802018)
ORDER BELOW EXH.23 IN REGULAR CIVIL APPEAL NO.84 OF 2018
(Ajij Kasam Mahabri, etc Vs. Shripati Ramu Ghorpade, etc.)

01. This is an application filed by appellant for condonation of delay to bring the legal representatives of deceased respondent No.9 on record. The respondent has filed reply opposing the application.

02. Heard. Perused the record.

03. It is the contention of appellant that, respondent No.9 Althaf Rahiman Mahabri expired on dated 10/08/2023 during pendency of the appeal. But the appellant has not get knowledge about the death of respondent No.9 within time. Therefore, the delay is caused to bring legal representatives of deceased respondent No.9 on record which is not deliberate. Hence, the appellant prayed to condone the delay for bringing the legal representatives of deceased respondent No.9 on record.

04. The respondents have resisted the application by filing say and denied all the contentions made in the application. However, it reveals that they have not denied the fact of death of respondent No.9 Althaf Rahiman Mahabri. It is contended that, the reason mentioned for condonation of delay is false. Therefore, the application moved by appellant is liable to be rejected. Alternatively prayed, if allowed, heavy cost be imposed.

05. Perused application, affidavit and say of other side. Perused the death extract [list Exh.22] filed by the appellant. It reveals that respondent No.9 expired on 10/08/2023. The appellant has filed this application on dated 12/03/2024. Apparently it is not filed within the stipulated period of limitation i.e. within 90 days. However, it transpires from the application that sufficient and genuine reason for not bringing

legal representative on record are explained by the appellant. The appellant has challenged the Judgment and Decree passed in R.C.S. No.18/2011, which is the suit for perpetual injunction. The appellant has right to challenge said order and decree. Mere delay caused in filing application cannot defeat the legitimate right of appellant to contest the proceeding.

06. The delay has been satisfactorily explained. Hence, I hold that it is justified to condone the delay caused in bringing L.R.'s of deceased respondent No.9 on record. In the result following order is passed.

ORDER

1. The application is allowed.
2. The delay in bringing legal representatives of deceased respondent No.9 on record stands condoned subject to cost of Rs.200/-.

(A. H. Kashikar)

Date :- 23/09/2024

Adhoc District Judge-1, Islampur.

Certificate

I affirm that, the contents of this P.D.F file order are same, word to word, as per the original order.

Name of Stenographer : J. R. More [Grade-1]
Court : Adhoc-District Judge-1, Islampur
Date : 23/09/2024
Order signed by the
Presiding Officer : 23/09/2024
Order uploaded on : 24/09/2024