

(CNR NO.MHSNO-40006802018)
ORDER BELOW EXH.24 IN REGULAR CIVIL APPEAL NO.84 OF 2018
(Ajj Kasam Mahabri, etc Vs. Shripati Ramu Ghorpade, etc.)

01. This is an application filed by appellant for setting aside abatement order. 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 set aside abatement order against respondent No.9.

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 abatement has been given by the appellant. Hence, application may 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 and therefore the appeal is automatically stood abated against deceased respondent No.9. However, it transpires from the application that sufficient and genuine reason for not bringing legal representative on record are explained by

the appellant. The delay is already condoned vide Exh.23. 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. Hence, considering this circumstances, I hold that the abatement needs to be set-aside in the interest of justice.

06. In view of discussion made above, I hold that the application deserves to be allowed. In the result following order is passed.

ORDER

1. The application is allowed.
2. The abatement of proceeding against deceased respondent No.9 stands set aside.

(A. H. Kashikar)

Date :- 23/09/2024

Adhoc District Judge-1, Islampur.

CERTIFICATE

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

Name of the Stenographer	: J. R. More, Steno, (Grade-I)
Court Name	: Adhoc District Judge – 1 & Addl. Sessions Judge, Islampur.
Date	: 23/09/2024
Signed by P.O. on	: 23/09/2024
Uploaded on	: 24/09/2024

