

COMMON ORDER BELOW EXH. 64 AND 66
IN R.C.S.No.83/2015

1- The plaintiff has filed present applications for setting aside abatement caused due to death of defendant No.3 and condonation of delay caused for filing an application for bringing legal heirs of deceased defendant No.3.

2- Plaintiff submitted that deceased defendant No.3 went to Nagaon from Malangaon for residence. He never visited Malangaon. Therefore, plaintiff has not got information about the death of defendant No.3. He has got the knowledge due to pursis filed by defendant No.4 at Exh.63 on 16.07.2019. Further plaintiff submitted that plaintiff is not having legal knowledge therefore delay of 208 days have been caused. Further he has submitted application at Exh.65 for bringing legal heirs on record with prayer to set aside the abatement. Hence, the present applications.

3- Defendant No.2 submitted his say to Exh.64 and resisted the application on the ground that plaintiff has not mentioned the date of death of defendant No.3. Further no documentary evidence regarding death is on record. Further such huge delay should not be condoned. Defendant No.4 has submitted his say at Ex.68 and resisted the applications on the

ground that plaintiff failed to file the application within stipulated time. Further he has not submitted sufficient reason to condone the delay. Further he has not prayed for setting aside abatement. Hence, prayed for rejection of application.

4- It is a record of fact that due to pursis (Exh.63) by defendant No.4 the knowledge of the death of defendant No.3 come on record. Further according to order XXII Rule 10(A) is the duty of the pleader to communicate to Court death of party. In the present case advocate of defendant No.3 has not filed any pursis in this regard. After perusal of record, it also appears that no written statement order has been passed on 16.10.2015 against defendant No.3. Further plaintiff in this application at Exh.64 in prayer clause mentioned about date of death of defendant No.3 i.e. 20.09.2016.

5- According to Article-120 of Limitation Act plaintiff has to bring the legal heirs on record within 90 days from the date of death. Further according to Article 121 if he failed to bring the legal heirs within 90 days the suit stands abated against deceased defendant after 60 days. In the present case, plaintiff has to take steps in this regard till 21.12.2016. But he has submitted both applications on 26.08.2019. It means prima facie there is delay of more than 2 years and 7 months. Further

defendant No.4 has filed pursis of death of defendant No.3 on 16.07.2019. Hence, this pursis cannot be ignored. Therefore, considering all these aspects and in the interest of justice, liberal view should be taken. Further matter should be presented by party. Considering all these aspects, applications deserve to be allowed. But at the same time costs should be imposed so that defendant No.2 and 4 can be compensated. In the result, I proceed to pass following order.

ORDER

1. The applications Exh. 64 and 66 are allowed subject to costs of Rs.500/- each to be paid to defendant No.2 and defendant No.4.
2. The abatement caused due to operation of law against defendant NO.3 is hereby set aside.
3. Delay caused in filing an application for bringing legal heirs on record of defendant No.3 is hereby condoned.
4. Issue notice to proposed LR's of defendant No.3.

Date : 18/10/2019
Kavathe-Mahankal.

[S.A.Kulkarni]
Jt. Civil Judge (J.D.),
Kavathe-Mahankal.

