

COMMON ORDER BELOW EXH. 76 & 78 IN R.C.S. No. 10/2015

(Passed on 22/01/2024)

These are applications filed by the plaintiff for condoning delay caused to bring legal heirs of defendant no.8 Mahaling Virupaksha Hingmire on record and for setting aside abatement order along-with liberty to bring on record his legal heirs. It is contended that defendant no.8 died on 31.10.2018. Further it is contended that present suit has been filed for partition and injunction. It is contended that legal heirs of deceased defendant no.8 are necessary party to the present suit after his death. However, the applications for taking legal heirs on record were not filed within the limitation of 90 days. Hence, the suit is abated against him. Further it is contended that, plaintiff is residing at Atpadi. Therefore, she was not aware about the death of defendant no.8. Consequently, there is delay of four years and seven months for taking legal heirs of defendant no.8 on record. The plaintiff has not caused delay deliberately. Hence, it is prayed that, applications be allowed.

2] Defendants have not filed their say despite sufficient opportunity. Hence, applications proceeded without their say.

3] Perused the application and record. These applications are supported by affidavit stating therein the reason for delay. It appears that, defendant no.8 is died on 31.10.2018 and present applications are filed on 05.04.2023. It is contended that, due to lack of knowledge about death of defendant no.8 applications to take his legal heirs on record was not filed on time. It is pertinent to note here that there is delay of four years and seven months for filing present applications. However, the Hon'ble Supreme Court vide its decision suo-moto writ petition no. 30/2020 dated 10.01.2022 has excluded the period of limitation for applications and suits from 15.03.2020 to 15.02.2022. Despite of it, there is delay of two years and seven months for filing present applications. However, the plaintiff has

made out sufficient reasons which prevented him from filing the applications. Apart from it, to settle all the questions/facts in dispute, it is necessary to grant permission to the plaintiff to bring the legal heirs of defendant no.8 on record by condoning delay caused for the same along-with setting aside abatement order. Moreover, there is no dispute regarding legal heirs of defendant no.8. As far as period of delay is concerned, it would be proper to impose cost for the same. Thus, considering the reason, I am inclined to allow present applications. In turn, I pass following order.

ORDER

- 1) Applications Exh. 76 and Exh.78 are allowed.
- 2) The delay caused for taking legal heirs of defendant no.8 on record is hereby condoned subject to cost of Rs.1500/- (Rs. One thousand five Hundred) to be credited to Government.
- 3) The abatement order passed against defendant no.8 is set aside.
- 4) The plaintiff is permitted to bring legal heirs of defendant no.8 on record.
- 5) The plaintiff is directed to comply the order within two weeks from the date of order.

Tasgaon
Date : 22/01/2024

Sd/...
(D. A. Darveshi)
2nd Joint Civil Judge J. D., Tasgaon.

COMMON ORDER BELOW EXH. 80 & 82 IN R.C.S. No. 10/2015

(Passed on 22/01/2024)

These are applications filed by the plaintiff for condoning delay caused to bring legal heirs of defendant no.29 Shamrao Hariba Pawar on record and for setting aside abatement order along-with liberty to bring on record his legal heirs. It is contended that defendant no.29 is died on 09.09.2016. Further it is contended that present suit has been filed for partition and injunction. It is contended that legal heirs of deceased defendant no.29 are necessary party to the present suit after his death. However, the applications for taking legal heirs on record were not filed within the limitation of 90 days. Hence, the suit is abated against him. Further it is contended that, plaintiff is residing at Atpadi. Therefore, she was not aware about the death of defendant no.29. Consequently, there is delay of four years and seven months for taking legal heirs of defendant no.29 on record. The plaintiff has not caused delay deliberately. Hence, it is prayed that, applications be allowed.

2] Defendants have not filed their say despite sufficient opportunity. Hence, applications proceeded without their say.

3] Perused the application and record. These applications are supported by affidavit stating therein the reason for delay. It appears that, defendant no.29 is died on 09.09.2016 and present applications are filed on 05.04.2023. It is contended that, due to lack of knowledge about death of defendant no.29 applications to take his legal heirs on record was not filed on time. It is pertinent to note here that there is delay of six years and eight months for filing present applications. However, the Hon'ble Supreme Court vide its decision suo-moto writ petition no. 30/2020 dated 10.01.2022 has excluded the period of limitation for applications and suits from 15.03.2020 to 15.02.2022. Despite of it, there is delay of four years and eight months for filing present applications. However, the plaintiff has

made out sufficient reasons which prevented him from filing the applications. Apart from it, to settle all the questions/facts in dispute, it is necessary to grant permission to the plaintiff to bring the legal heirs of defendant no.29 on record by condoning delay caused for the same along-with setting aside abatement order. Moreover, there is no dispute regarding legal heirs of defendant no.29. As far as period of delay is concerned, it would be proper to impose cost for the same. Thus, considering the reason, I am inclined to allow present applications. In turn, I pass following order.

ORDER

- 1) Applications Exh. 80 and Exh.82 are allowed.
- 2) The delay caused for taking legal heirs of defendant no.29 on record is hereby condoned subject to cost of Rs.3000/- (Rs. Three thousand) to be credited to Government.
- 3) The abatement order passed against defendant no.29 is set aside.
- 4) The plaintiff is permitted to bring legal heirs of defendant no.29 on record.
- 5) The plaintiff is directed to comply the order within two weeks from the date of order.

Tasgaon
Date : 22/01/2024

Sd/....
(D. A. Darveshi)
2nd Joint Civil Judge J. D., Tasgaon.