



RCS No.80/2014
CNR No. MHSN14000469-2014
Tajuddin Vs. Sayyad

COMMON ORDER BELOW EXH.76 TO 78

These are applications for condonation of delay, setting aside abatement order and bringing legal heirs of defendant No.5 on record.

2. Heard learned advocate Shri.B.B.Deshpande for plaintiff and learned advocate Shri.G.M.Pawar for other defendants at length. The proposed legal heirs failed to appear and file their reply inspite service of show cause notice (Exh.79 to 84 and 87). I have carefully perused the record. The plaintiff has preferred suit for perpetual and mandatory injunction. Original defendant No.5 Ismile Gulab Mulla is died on 09/10/2020 and substituted by representatives. The right to sue is survived against them. But, they are not brought on record within time. Thus, the suit is abated against him. Accordingly, there is delay for setting aside abatement and bringing legal heirs on record.

3. Need to consider nature of suit. Therefore, there is need to take liberal view while condoning alleged delay. There is need to grant an opportunity subject to cost. An opportunity is backbone of justice. The procedural law is hand maid of justice. Hence, the plaintiffs are entitled to the opportunity. Other side will meet justice by way of cost. Hence, the applications are deserved to be allowed subject to cost. In the result, I pass following order.

ORDER

1. The applications are allowed subject to cost of Rs. 300/-, in the interest of justice.

2. The cost shall deposit in the Court till next date, failing which order will be automatically cancelled.
3. Alleged delay shall be condoned vide section 5 of the Limitation Act.
4. The abatement of suit for defendant No.5 shall be set aside vide Order 22 Rule 4(5) of Code of Civil Procedure.
5. The plaintiffs are permitted to bring legal heir of defendant No.5 on record vide Order 22 Rule 4 of the Code of Civil Procedure.
6. An order dictated on computer and pronounced in open Court.

Date : 09/12/2024

(S. A. Surjuse)
Civil Judge Jr. Division, Shirala.