



RCS No.115/2014
CNR No. MHSN14000695-2014
Sanjay Vs. Dilip

ORDER BELOW EXH.81

This is application for condonation of delay.

2. Heard learned advocate Shri.B.A.Kumbhar for plaintiff and learned advocate Shri.Suhase for defendants and proposed legal heirs at length. I have carefully perused the record and argument. This is suit for perpetual injunction. The defendant No.1 Dilip is died on 08/04/2024. The plaintiff has knowledge of death of defendant No.1. Under such circumstance, awaiting till receiving death certificate is no good ground. Therefore, the delay caused to bring legal heirs of defendant No.1. Hence, it is appeared that there is default of plaintiff.

3. Need to consider nature of suit. Accordingly, the right to sue is survived against legal heirs of defendant No.1. 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. Granting cost to the defendants for delay will meet justice. Hence, the alleged delay can be condoned subject to cost, vide Section 5 of the Limitation Act. In the result, I pass following order.

ORDER

1. The application is allowed in the interest of justice.
2. The delay shall be condoned subject to cost of Rs.500/- and be

paid to the proposed legal heirs till next date, failing which order will be automatically recalled, in the interest of justice,

3. An order dictated on computer and pronounced in open court.

Date : 06/01/2025

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



RCS No.115/2014
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ORDER BELOW EXH. 82

This is application for setting aside abatement of suit.

2. Heard learned advocate Shri.B.A.Kumbhar for plaintiff and learned advocate Shri.Suhase for defendants and proposed legal heirs at length. I have carefully perused the record and argument. This is suit for perpetual injunction. The defendant No.1 Dilip is died on 08/04/2024. The delay for set aside abatement and bringing legal heirs on record is condoned vide order below application Exh.81.

3. The reasons mentioned in the application are sufficient and satisfactory. The right to sue survived against propose legal heir of defendant No.1. Their presence are required to decide right and liabilities of the parties of this suit and adjudicate the suit on merit. It may be help to both parties. The reasons recorded as above are sufficient to allow this application subject to cost. I found substance in the application. In the result, I pass following order.

ORDER

1. The application is allowed subject to cost of Rs.500/- in the interest of justice.
2. The abatement of suit against the defendant No.11 is set aside in the interest of justice.
3. The plaintiff shall comply the order till next date, failing which

order will be automatically recalled.

4. Order dictated on computer and pronounced in open court.

Date :06/01/2025

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



RCS No.115/2014
CNR No. MHSN14000695-2014
Sanjay Vs. Dilip

ORDER BELOW EXH. 83

This is application to bring legal heirs of the defendant No.1 on record, add them as defendant and amendment of plaint.

2. Heard learned advocate Shri.B.A.Kumbhar for plaintiff and learned advocate Shri.Suhase for defendants and proposed legal heirs at length. I have carefully perused the record and argument. This is suit for perpetual injunction. The defendant No.1 Dilip is died on 08/04/2024. There is need to decide the suit and controversy between party on merit.

3. In view of order dated 06/01/2025 below application (Exh. 81 and 82), I have condoned delay for setting aside abatement order and bringing legal heirs on record and also set aside abatement order. The right to sue survived against propose legal heirs of defendant No.1. Their presence are required to decide right and liabilities of the parties of this suit. The same is required to adjudicate the suit on merit. It may be help to both parties. The reasons recorded as above is sufficient to allow this application, vide Order XXII Rule 4 (1) of the Code of Civil Procedure. It will not change nature of the suit. It is formal amendment. Those parties are necessary parties of suit. Hence, I found substance in the application. In the result, I pass following order.

ORDER

1. The application is allowed as prayed in the interest of justice.

2. The plaintiffs shall bring legal heirs of defendant No.1 on record, and amend the title clause of plaint in that regard within stipulated period and comply accordingly, in the interest of justice.
3. Order dictated on computer and pronounced in open court.

Date :06/01/2025

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