

ORDER BELOW EXH. NO. 75 IN R.C.S. No. 61/2005
(Arun Nanware and Ors. Vs. Waman Nanware and Ors.)

Legal representative of plaintiff No. 2 has filed the application for setting-aside abatement. Called say of defendant No. 1.

[2] As per the contention in application, plaintiff Nos. 1 to 3 have been died on 02.11.2014, 04.08.2014 and 09.01.2017. It was necessary to take their representatives on record within 90 days. But as L.R's were unaware of the suit, they have not brought legal heirs of deceased plaintiffs within stipulated period, Accordingly, he prayed for setting-aside the abatement.

[3] Defendant No. 1 has filed his say on application at Exh. No. 83 and prayed for rejecting the application stating that, after judgment in the suit, appeal has been filed in the Hon'ble District Court, Pandharpur, in that appeal an application for bringing legal heirs of deceased plaintiffs have been filed. It shows that, applicant has knowledge of the suit. It is necessary to file separate applications for condonation of delay, abatement set aside and bringing legal heirs of each plaintiff as they have died on different dates. Cause of action of each application is separate. He has not filed death certificates of deceased plaintiffs, therefore, application needs to be rejected.

[4] It is revealed from perusal of the record that, the suit is of the year 2005, its made time bound by Hon'ble District Court, Pandharpur. It is also observed that, the signature of L.R on present application and the signature on postal acknowledgment of notices at Exh Nos. 60 and 61 are same. Therefore, it can be presumed that, present applicant has knowledge of the suit in February, 2024 but despite of having knowledge of the suit, he failed to appear before Court. It is crystal clear that, applicant caused delay for filing this application. But, it is well-settled that, the rules of procedure are intended to be a hand made to the administration of justice. A party cannot be refused just relief because of some mistake, negligence, inadvertence on his part. As the present suit is filed for partition and separate possession, the legal representatives of deceased plaintiff nos.1 to 3 need to be added, as a party in this suit. In view of reasons, it is

necessary to set-aside the abatement. To avoid multiplicity of proceeding and to decide rights of all the parties in the same suit, it would be just and proper to permit applicant to substitute legal heirs of deceased plaintiff no.1 to 3. As far as, question of delay is concerned, it can be compensated by awarding costs to defendant No. 1. Hence, the following order :

ORDER

- 1] Application at Exh.75 is hereby allowed, subject to cost of Rs.3000/-.
- 2] Cost amount be given to defendant No. 1 till next date.
- 3] The abatement will be set-aside, after depositing of cost.
- 4] Both the parties are directed to expedite the proceeding of the suit.

Date : 03/08/2024.

(Smt. S.N.Gangwal-Shah)
Civil Judge, Jr. Div., Mangalwedha

CERTIFICATE

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

(a) Name of the Stenographer : P.T. Jadhav

(b) Name of the Court : C.J..J.D., Mangalwedha, Dist. Solapur,

(c) Order signed by P.O. on : 03/08/2024

(d) Order uploaded on : 03/08/2024