

Regular Civil Suit No.168/2012

Order Below Exh. 53

This is an application for condoning the delay caused in bringing legal heirs of defendant No. 3 on record.

02. It is contended that, defendant No. 3 died on 06.05.2017 and this fact was informed by the defendant to the Court on 09.06.2016 by passing pursis Exh. 47. However, no details of the legal heirs of deceased were given. So it took time to obtain said information. So also, to obtain the death certificate of deceased defendant No. 3. The plaintiff received said death certificate on 09.09.2016. Thereafter, on 07.03.2017 the plaintiff moved an application for bringing legal heirs of deceased defendant on record vide Exh. 49. However, at that time, inadvertently the plaintiff had not seen the pursis passed by the defendants in respect of death of defendant No. 3. The delay caused in bring legal heirs of defendant No. 3 on record is not intentional. Hence, on all these and other grounds plaintiff prayed for condoning the delay caused in bringing legal heirs of defendant No. 3 on record.

03. Learned advocate for defendants resisted application under consideration by filing say Exh.55 in which the defendant denied all the contents of the application under consideration. It is the contention of the defendant that, though the defendant passed pursis Exh. 47 even then intentionally the plaintiff has not taken steps to prolong the matter. The plaintiff has not brought on record legal heirs of defendant No. 3 within time. Defendant No. 3 died on 06.05.2016 thereafter there was summer vacation so immediately after opening of the Court on 09.06.2016 defendants filed pursis. The plaintiff was supposed to bring legal heirs of defendant No. 3 within 90 days. But he failed in it and instead of it he moved application Exh. 49 to which the defendant submitted their say Exh. 52. This Court has rejected said application on 29.03.2017. Thereafter, application under application has been moved.

Hence, on all these and other grounds defendant prayed for rejection of application. In case if Court comes to conclusion to allow the application he prayed for cost of Rs.5,000/-.

04. Heard learned advocate and gone through record of proceeding. Admittedly, defendant No. 3 died on 06.05.2016 and this fact was informed to this Court on 09.06.2016. Prior to this application plaintiff had moved application at Exh. 49 which has been decided by this Court on 29.03.2017. Thereafter, application under consideration has been moved. It is contended that, the plaintiff was unable to get information regarding the legal heirs and details of death of defendant No. 3 and his death certificate. So he failed to bring legal heirs of defendant No. 3 on record within time. So also, he had not seen pursis passed by defendant informing the Court about the death of defendant No. 3. Application under consideration is supported by affidavit. The suit is in respect of recovery of huge amount. So it will be just and proper to give an opportunity to the plaintiff to decide the matter on merit as the delay cannot be the only ground to reject the application. So also it will help the Court to decide the controversy between the parties on merit and to avoid multiplicity of litigation. As far as delay is concerned it can be compensated by imposing cost on erring party. Hence, in view of this discussion I pass following order.

ORDER

Application (Exh. 53) is hereby allowed subject to cost of Rs.1,000/-.

Date:- 10/07/2017

[Sou. V. P. Gaikwad]
Jt. Civil Judge, Sr.Division, Karad.