



Order below Exh.57 in R.C.S. No.110/2019

(Madhukar Inamdar Vs Sneha Inamdar +1)

(Order passed on 17.02.2025)

The applicant is defendant no.2 in the present suit. She has made the present application to condone the delay caused for bringing the legal representatives of the deceased sole plaintiff on record, as provided under Order XXII Rule 3 of the Code of Civil procedure, 1908 (in short 'the Code').

02. Perused the application, reply Exh.65 and the record. Heard the parties and their respective advocates.

03. The sole plaintiff is died on 27.10.2022. The present applicant is arrayed as defendant no.2 in the suit. She has applied for substitution as legal representative, however, while making the application, she has addressed herself as the plaintiff, as if the relief sought by her already granted.

04. The applicant has alleged that the sole plaintiff is died on 27.10.2022. The deceased plaintiff had executed the Will dated 14.05.2020 in her favour. By the effect of such Will, she becomes legal representative to the deceased plaintiff. The copy of Will was placed in custody of the plaintiffs brother Arvind. The brother of plaintiff communicated about the Will to her, on 19.09.2023. The delay is caused to get the legal information and to collecting the documents, further the Court was on leave for 2- 3 months. The delay is not caused out of her negligence, however, out of above just and honest, legal reasons. Hence, this application.

05. Defendant no.1 strongly opposed the application as the application is not tenable in the eyes of law. In the reply, she disputed the

legality of due execution of Will. Thereby, she prayed of rejection of the application.

REASONS

06. The substitution or continuation of proceeding by the fact of surviving right to sue is governed by Order XXII of the Code. The plaintiff was the sole person and is died on 27.10.2022. In view of the provisions of the Limitation Act, 1963, the period of 90 days is prescribed to bring the LR's on record. On expiry of such limitation, the period of 60 days are also available to set aside the abetment order is provided. The period of 90 days is expired on 13.01.2023 and the period of 60 days thereon is expired on 14.03.2023. Thereby, the period for bringing the LR's of sole plaintiff and setting aside the abetment order both are expired.

07. The applicant alleged that she got the knowledge of such execution of Will on 19.09.2023. On that day, the date of abatement was already come in to existence. The lack of knowledge could be a reasonable ground for setting aside the abatement order from the date of knowledge i.e 60 days from 19.09.2023. However, the abatement setting aside application is not made nor on the making of present application, it was within 60 days from the date of knowledge. Thereby, both the abatement and the setting aside abatement application, limitations were expired. Now, the issue will raise that the delay application can be considered for the present facts of the matter.

08. The provision to substitute the deceased plaintiff's legal representatives, Rule 3 deals with it. In view of Rule 3(1), on demise of sole plaintiff and surviving of right to sue, the suit may be preceded on application of legal representatives. As per Rule 3(2), in case of no application is made within time limited by law the fate of the proceeding is provided to be of the abetment of the suit in regards to the deceased plaintiff and on application of defendants the cost may be incurred and

recovered from LR's out of the estate of the deceased plaintiff. There is no provision to prescribe for condoning delay, as provided in Rule 4(5) of the Code. Therefore, from the construction of provisions i.e. Rule 3 and 4, it does not infer that the right of condonation of delay provided as against the deceased defendant or defendants, does not extend as against the deceased plaintiff or plaintiffs. In view of Order XXII of the Code, there is no intention appears to extend the remedy of Condonation of delay to the LR's of deceased plaintiff or plaintiffs. Therefore, the application deserves to be rejected. Hence, I pass following order -

ORDER

1. The application Exh.57 is rejected.
2. The application is disposed of accordingly.

Place : Karad.
Date :17.02.2025.

(Sudhir M. Bomidwar)
Jt. Civil Judge, Jr.Dn., Karad.