



ORDER BELOW EXHIBIT 23

(Passed on this 1st day of November, 2025)

1. This is an application under Order XXII Rule 4(5) of the Code of Civil Procedure to set aside the abatement of the suit against the deceased defendant no. 1 namely, Gorakhnath Krushna Shinde.
2. Perused the record. Heard the learned advocates for both the sides. The defendant no. 1 namely, Gorakhnath Krushna Shinde is reported to have died on 05-09-2023 as per death certificate filed on record. The present application is filed on 18-10-2025 i.e. beyond the period of limitation as prescribed under the Order XXII Rule 4(5) of the Code of Civil Procedure.
3. In this background, it is the case of the plaintiff that due to ignorance as regards to the death of the defendant no. 1 he failed to take appropriate steps. The aforesaid reason mentioned as to the delay is justified as it is probably difficult for a party to produce necessary documents with respect to other side. Hence, the delay is condonable. Moreover, the present application is also supported by the affidavit of the plaintiff. It would also be necessary to note that the rights of both the parties are at stake in the present suit. Hence, if the present application is rejected the plaintiff would suffer irreparable loss and it may even lead to multiplicity of proceedings.

4. Moreover, it is necessary to reiterate the ratio laid down by the Hon'ble Supreme Court in (**Mithailal Dalsangar Singh and Ors v. Annabai Devram Kini and Ors, Appeal (Civil) 7396-97 of 2003**)

“In as much as the abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be considered liberally. A simple prayer for bringing the legal representatives on record without specifically praying for setting aside of an abatement may in substance be construed as a prayer for setting aside abatement. So also a prayer for setting aside abatement as regard one of the plaintiffs can be construed as a prayer for setting aside the abatement of the suit in its entirety. Abatement of suit for failure to move an application for bringing the legal representatives on record within the prescribed period of limitation is automatic and a specific order dismissing the suit as abated is not called for. Once the suit has abated as a matter of law, though there may not have been passed on record a specific order dismissing the suit as abated, yet the legal representatives proposing to be brought on record or any other applicant proposing to bring the legal representatives of the deceased party on record would seek the setting aside of an abatement. A prayer for bringing the legal representatives on record, if allowed, would have the effect of setting aside the abatement as the relief of setting aside abatement though not asked for in so many words is in effect being actually asked for and is necessarily implied. Too technical or pedantic an approach in such cases is not called for.”

5. Hence, considering the aforesaid ruling of the Hon'ble Supreme Court and the reasons discussion above it would be just and proper to set aside the abatement of the suit. Therefore, the following order is passed :

ORDER

1. The application is allowed.
2. The order of abatement is hereby set aside subject to cost of Rs. 1,000 (Rupees One Thousand) to be paid by the plaintiff in favour of the Taluka Legal Services Authority, Mahabaleshwar.
3. The cost shall be paid by the plaintiff on or before next date, in case of failure the application will stand rejected.

Date: 01-11-2025

(Uday S. Ivare)
Civil Judge Junior Division
Mahabaleshwar, Satara

Certificate

The contents of the PDF file are same, word to word correct as per original order.

Court Name	:	Shri. U. S. Ivare Civil Judge Junior Division, Mahabaleshwar.
Order date	:	01.11.2025.
Order signed date	:	01.11.2025.
Name of Stenographer	:	Shri. S. S. Kadam, Stenographer L.G. - 3
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