

R.C.S. No. 93/2016
Vijay & ors. Vs. Maruti & ors.

Order Below Exh.33
(Passed on 12th April, 2024)

This is an application filed by the plaintiffs for setting aside abatement order of deceased defendant No.1 Maruti Krushna Gaikwad, who according to them died on 10.05.2021. The plaintiffs submitted that for want of necessary documents, the delay has been caused, which is not intentional. Therefore, they prayed to allow the application.

2. The present application has been resisted by the proposed legal representatives by filing their reply Exh.46. They submitted that there is no documentary proof in support of the contention made in the present application. In fact, the plaintiffs have not filed the delay condonation application and application for setting aside abatement order, as well. It is not expected as per law. Therefore, the present application be rejected with cost. However, they fairly submitted that if the application is allowed, cost be imposed.

3. Perused the application and say along with the entire record. It is a matter of record that defendant No.1 has died, which is not in dispute. His death certificate is filed on record alongwith list Exh.38. In such circumstances, looking to the nature of suit, the legal representatives are required to be brought on record so as to decide real question in controversy between the parties on merit. Still, there is no plausible explanation in the delay caused. In such circumstances, some amount of the cost has to be imposed on the plaintiffs. Hence, the following order :

ORDER

1. The application (Exh.33) is hereby allowed subject to payment of cost of Rs.1,000/- (Rupees One Thousand Only) payable to the proposed legal representatives of deceased defendant No.1.
2. On payment of cost, as above, the delay is condoned by setting aside abatement order.

(Dictated and Pronounced in open court.)

Date : 12.04.2024

(R.M. Bhende)
2nd Jt. Civil Judge Jr. Dn. Wai.