

ORDER BELOW EXH. 114 IN R.C.S. 16/2010
CNR NO. MHTH17-000009-2010

(Farooq Dhanani Vs. Gangubai Bhoir and others)

1] Plaintiff filed this application for condonation of delay for filing of the application to set aside the abatement.

2] Learned advocate Shri. D. P. Bhatt for plaintiff submitted that defendant no. 3 died on 19.07.2018. He further submitted that plaintiff get the information about the death of defendant no. 3 when the *pursis* of the death of defendant no. 3 filed by the learned advocate of defendant and therefore, there is a delay of 73 days caused to brought the legal heirs on record and therefore, suit was abated against defendant no. 3. He further submitted that if application is rejected, great prejudice would cause to plaintiff and suit will not adjudicate on merit. He further submitted that in order to give a fair chance of hearing the delay may please be condoned.

3] Learned advocate Shri. Pandit for defendant no. 4 and 5 filed his say thereon and objected this application on the ground that plaintiff has not filed this application within stipulated period. He further submitted that plaintiff filed this application for prolong the matter. He further stated that there is no merit in this application. Hence, he submitted that it be rejected.

4] It appears that the suit is filed for the specific performance of contract relating to immovable property. Plaintiff is claiming relief against defendant no. 3. Therefore, the legal heirs of defendant no. 3

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have right and interest in the suit property. Without impleading them in the suit, suit cannot be adjudicate. If application is rejected, the suit will not decide on merit and the effective decree cannot be passed. Hence, in the interest of justice delay needs to be condoned. The plaintiff is negligent while moving this application. Therefore, plaintiff to bear the cost. Accordingly, I pass the following order.

O R D E R

Application is allowed subject to costs of Rs.300/-.

Palghar
Date : 17.01.2019

Sd/-
(D. U. Dongare)
Jt. Civil Judge, S.D.
Palghar.

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