



**ORDER BELOW EXH. 248 IN R.C.S. NO. 171/2015
(Chandrakant Baburao Patil and other 1 Vs. Asif Iqbal
Dhanani and other 4)**

The present application is filed by original defendant No. 1 (plaintiff No. 1 of the counter claim) to set aside abatement in respect of deceased original defendant No. 4 (plaintiff No. 4 in the counter claim).

2] Learned advocate for original plaintiffs (defendants in the counter claim) has raised objection to allow the present application.

3] It appears from record that original defendant No. 4 (plaintiff No. 4 in the counter claim) Smt. Jaibun Farooq Dhanani has died on 09/10/2020 and present application is filed on 10/03/2023. It appears from record, original plaintiffs have failed to bring on record legal representatives of deceased defendant No. 4 and therefore, my learned predecessor has passed order below Exh. 1 to the effect that suit has abated against defendant No. 4.

4] However, it appears that there is counter claim on record and in the said counter claim now original defendant No. 1 has filed the present application to set aside abatement in respect of deceased defendant No. 4. Original suit is filed for permanent injunction. Counter claim is for declaration and permanent injunction. There are other defendants on record. In the facts and circumstances of the suit right to sue survives. Substantive rights of the parties cannot be defeated by pedantic approach by observing strict adherence to the procedural aspect of law. Therefore, the present application needs to be allowed in the interest of justice. Hence, I proceed to pass following order.

ORDER

- 1) Application (Exh. 248) is allowed.
- 2) Abatement is set aside.

Palghar
Date : 03/07/2023

(Amit P. Kokare)
Civil Judge S. D.,
Palghar