

Order Below Exh. 39
(Dated 24/01/2023)

1] According to appellant, respondent no. 2 died on 18/10/2019, but he got knowledge of the death on 02/09/2022. He wants to bring legal representatives of the deceased respondent no. 2 on record. By virtue of application at exh. 39, he is requesting for setting aside the abatement of appeal against respondent no. 2 along-with condonation of delay caused in that behalf.

2] Adv. Mr. K. P. Belokar recorded say for respondent no. 1 and opposed the application. It is submitted that deceased respondent no. 2 was the real maternal uncle of the appellant, therefore, reason stated by the latter prima facie appears to be false. It is further submitted that application is moved about three years after the death of respondent no. 2, though period of limitation for setting aside abatement is 60 days, and for bringing LRs of deceased is 90 days. It is stated that application is moved to prolong the matter. It is further stated that heavy costs be saddled, if application is allowed.

3] Adv. Mr. C. S. Poddar recorded say for other respondents. He did not raise any objection to the application.

4] Heard Adv. Mr. A. S. Beriya for appellant/applicant, Adv. Mr. K. P. Belokar for respondent no. 1, and Adv. Mr. C. S. Poddar for other respondents. Perused record.

5] Respondent no. 2 is said to have died on 18/10/2019. Article 121 of the Limitation Act, 1963 prescribes period of limitation of 60 days to apply for setting aside an abatement. Order 22 Rule 9 (2) of the Code of Civil Procedure empowers the Court to set aside the abatement, if it is proved that applicant was prevented by any sufficient cause. Sub-rule (3) of Rule 9 makes the provisions of Section 5 of the Limitation Act

applicable to the applications filed under sub-rule (2).

6] It needs to be noted here that restrictions were imposed from March-2020 to contain the spread of Covid-19 pandemic, and the period of limitation for filing suits, applications, etc. was extended.

7] Subject matter of the suit is an immovable property situated at Washim. A decree of possession is passed against appellant and in favour of respondent no. 1. Interest of justice demands that a fair and reasonable opportunity should be given to appellant to challenge the decree passed against him.

8] In the facts and circumstances of the particular case, I am of the opinion that delay caused in submitting the application needs to be condoned, and the abatement of appeal set aside, subject to costs of Rs. 3,000/- to be paid to respondent no. 1. Hence, the order -

ORDER

- 1] Application at exh. 39 is allowed.
- 2] Delay caused in making application for setting aside abatement of appeal against respondent no. 2 is condoned, subject to payment of costs of Rs. 3,000/- (Rupees Three thousand only) to respondent no. 1, to be paid within three weeks from today.
- 3] On deposit or payment of costs of Rs. 3,000/-, abatement of appeal against respondent no. 2 shall stand set aside.
- 4] In case of default in deposit or payment of costs of Rs. 3,000/- within the stipulated period, the appeal shall stand dismissed against respondent no. 2.

Washim.
Date: 24/01/2023

(Amogh S. Kaloti)
Principal District Judge
Washim.

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment/ Order are same word to word, as per the original judgment/order.

Name of Stenographer :- A. W. Ajmire, Stenographer (Grade-III)

Name of Court :- Principal District & Sessions Judge,
Washim, Dist. Washim.

Date of Judgment/ Order :- 24/01/2023

Judgment/Order signed by :- 24/01/2023
the Presiding Officer on

Judgment/Order uploaded on :- 25/01/2023