

ORDER BELOW EXHIBIT NO. 26 IN R.C.S. NO. 134/2023

(Shelendra and Ors. Vs. Dilawar Kha and Ors.)

1. This is an application made by applicant/plaintiff no.1 Shelendra to condone delay for getting set-aside abatement & to set aside abatement of deceased defendant no.1 viz. Dilawar Kha Kalandar Kha. But the Non-applicants / defendants strongly opposed the application vide their say.
2. Heard. Read the application and say. Perused the record and proceeding. I have also gone through the relevant provisions of the Code of Civil Procedure and the Limitation Act, 1963. This is a suit for possession and mesne profit.
3. The deceased defendant no.1 is reported to have died on 12/09/2024. He is survived by 1-A Nasib Dilawar Kha, 1-B Jafar Dilawar Kha, 1-C Saheb bee Dilawar Kha, 1-D Shahista bee Dilawar Kha and 1-E Shagusta Parveen Dilawar Kha. They are legal heirs of deceased defendant no.1. The right to sue, therefore, survives. However, applicant neither brought L.R.'s on record within 90 days from the date of death of defendant no.1 nor filed an application for setting-aside his abatement within 60 days from the date of abatement. The suit is automatically abated against deceased defendant no.1. Hence, applicant is seeking delay condonation for getting set-aside abatement & to set aside abatement of defendant no.1. The applicant contended that he could not bring L.R.'s of deceased defendant no.1 on record and to set-aside abatement of deceased defendant no.1 within limitation due to no information and not available documents . The application is supported by an affidavit. Hence, it is well settled that opportunity of natural justice

should be given to everyone. In view of this, an opportunity is required to be given to applicant.

4. In order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit, it is necessary to bring the legal representatives of deceased defendant no.1 on record. For this, delay should be condoned & to set-aside abatement of defendant no.1. In view of discussions supra, I am of the considered opinion that the application is liable to be allowed. Hence, the order.

ORDER

- 1] The application is hereby allowed.
- 2] The delay is condoned for getting set- aside abatement of defendant no.1.
- 3] The abatement of defendant no.1 is hereby set aside.

Sd/-

Mangrulpir
Date- 08/08/2025

(Khwaja C. Kalal)
Jt. C.J.J.D. Mangrulpir,
Tal. Mangrulpir, Dist. Washim.

CERTIFICATE

“ I affirm that the contents of this P.D.F. file order are same word for word as per original order.”

Name : Shri. S. S. Rathod (Jr. Clerk)

Court Name : Shri. Khwaja C. Kalal,
Jt. C.J.J.D. & J.M.F.C., Mangrulpir.

Date of Order : 08/08/2025

Order signed by presiding : 08/08/2025
officer on

Order uploaded on : 12/08/2025