

KABC0A0049452012



**ORDER ON IA FILED**  
**UNDER ORDER XVIII RULE 17 R/W**  
**SEC.151 OF CPC DATED 17.08.2021**

Plaintiff has filed this IA to recall order dated 31.08.2016 and 18.03.2021 for taking steps against D-5.

In the accompanying affidavit it is stated that during the pendency of the suit 5<sup>th</sup> defendant expired. Plaintiff wanted to bring the legal representatives. The enquiry to procure the details of the legal representatives of the 5<sup>th</sup> defendant were not successful in spite of best efforts. Defendant Nos.1 and 2 and LR's of defendant No.5 are the necessary parties to the suit and they have to be brought on record. Hence, sought to allow the application.

Defendant has not filed the objections.

On the perusal of the proceedings, it is noticed that suit against D-1 and D-2 is

came to be dismissed on 31.08.2016. The reasons for the dismissals are clearly stated. The restoration of the suit against defendants No.1 and 2 is not sought within the period provided nor there are any reasons even at this stage for seeking the restoration of the suit against defendant No.2. Plaintiff/applicant has not stated any reasons for not taking timely steps against defendants No.1 and 2. There are no materials to believe that even after the dismissals of the suit defendants No.1 and 2 have done anything to accrue any cause of actions to the plaintiff. Therefore there are no reasons to restore the suit against defendants No.1 and 2.

Defendant No.5 is reported dead as per the proceedings dated 28.05.2013. LR's application for defendant No.5 was came to be filed on 12.02.2020. Thereafter, steps are not taken until 18.03.2021 when it is ordered that suit against defendant No.5 is abated. Even in the present affidavit it is stated that plaintiff could not secure necessary

particulars of LR's of defendant No.5 to bring them on record. Legal heirs, as defined in the CPC are the persons representing the estate of the deceased. Going by the pleadings, it is up to the plaintiff making out the cause of action against the definite defendant by ascertaining the persons representing the deceased defendant. By the inability to trace the legal heir, it is also equally true that right to sue has not survived against the deceased defendant.

At this stage, it is equally clear that surviving right to sue against one particular defendant is not the very same right to sue operating against different defendant. In other words, surviving right to sue against each of the defendant is distinct and separate. But, for the enabling provision of joining the different defendants for common relief or common cause of action has enabled the plaintiff to bring different defendants to include in a suit. Under such circumstances, the inability to bring the LR's on record by the plaintiff equally mean that the right to sue

has not survived against the deceased defendant.

Hence, not taking steps against the LR's will not affect the plaintiff in any manner. Consequently, there is no necessary to restore the suit either against defendant No.1, 2 or LR's of defendant No.5. Hence, application is dismissed.

**(K.S.Gangannavar)**

LXXIII Addl. CC & SJ, M.H. Unit,  
B'luru.(CCH-74)