

C.M.P.Nos.389 to 391 of 2015
in
S.A.No.1281 of 2005

P.R.SHIVAKUMAR.J.,

Though the counsel appearing for the respondent took time for filing counter and this Court granted such time, till date the respondent has not chosen to file the counter. Hence, this Court decides to pass an order on merits after hearing the oral submissions to be made on both sides. Accordingly, the submissions made by Mr.R.Srinivas, learned counsel appearing on behalf of the petitioners and by Mr.T.R.Davesan, learned counsel appearing on behalf of the respondent are heard.

2. C.M.P.No.391, 390 and 389 of 2015 have been filed respectively to implead the legal representatives of the deceased first appellant, to set aside the abatement caused by the death of the first appellant and for condoning the delay in filing the petition to set aside abatement. The delay in filing C.M.P.No.389 of 2015 is no doubt enormous, namely 2687 days. The reasons assigned in the supporting affidavit tend to cast the blame on the previous counsel. No affidavit came to be obtained from the previous counsel. Hence, this Court is of the view that the reason assigned is not fully satisfactory. However, considering the difficulty of the party in getting an affidavit from the erstwhile counsel when the party casts blame on him, this Court is of the view that some kind of leniency to the petitioners can

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be shown, provided the respondent is compensated with costs. This Court takes such a view, since the appeal in respect of one portion of the property remains intact as the purchaser from the first appellant is already on record as the second appellant and a split verdict in respect of two portions shall not be desirable. Considering the fact that the second appeal has not abated *in toto* and also taking into account the number of days of delay, this Court deems it appropriate to allow these petitions and tax the petitioners with a cost of Rs.5,000/- to be paid to the respondent.

3. Accordingly, all the three civil miscellaneous petitions are allowed, the delay in filing the petition to set aside abatement caused by the death of the first appellant is condoned, the abatement caused by the death of the first appellant is set aside and the petitioners 3 to 6 are impleaded and ranked as appellants 3 to 6 in the second appeal. The petitioners shall pay a sum of Rs.5,000/- as costs to the respondent on or before the next hearing date. The Registry shall make necessary corrections in the cause title and list the second appeal for disposal on 22.09.2015.

01.09.2015

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