

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2016

CORAM

The Honourable MR. JUSTICE M.SATHYANARAYANAN

C.M.A.No.3454 of 2010

1.K.Alamelu @ Bhanu
2.Muthaian @ Maharajan
3.M.Rajeswari

... Appellants/Petitioners

Vs

The Union of India owning
Southern Railway rep.by its
General Manager, Chennai 600 003. ... Respondent/Respondent

Appeal filed under section 23[1] of the Railway
Tribunal, Act 54 of 1988 against the order passed in
IA.No.40/2010 in D.No.107 of 2010 passed by the Railway Claims
Tribunal, Chennai Bench, dated 28.09.2010.

For Appellant : Mr.S.Parthasarathy

For Respondent : Mr.V.G.Suresh Kumar

JUDGMENT

The petitioners/applicants filed an application in
IA.No.40/2010 in D.No.107/2010 for condonation of delay of 86
days in filing the petition in D.No.107/2010 and the same came
to be dismissed on 28.09.2010 on the ground that no proper and
tenable reasons have been put forth and challenging the
legality of the order, the present appeal is filed.

2. Mr.S.Parthasarathy, learned counsel appearing for
the appellants had drawn the attention of this Court to the
affidavit of the 1st appellant/1st petitioner and would submit
that the husband of the 1st appellant died on 04.04.2009 in a
train accident at Nungambakkam Railway Station and she was
under bereavement and stayed in her native place along with
her parents between 20.04.2009 and 30.03.2010 and with the
assistance of her parents, came back to Chennai, for receiving
the police records and it was received on 12.01.2010 and on
01.04.2010, she took steps to get the Legal Heirship
Certificate, which was received by her on 12.05.2010 and
subsequently, the 1st appellant fell sick on account of viral

fever between 15.05.2010 and 20.06.2010 and was also advised bed rest and as such, the delay of 82 days had occurred and in the said circumstances, it cannot be construed to be neither willful nor wanton and the Tribunal, without properly appreciating the reasons stated, has erroneously dismissed the application on the ground of non-furnishing of sufficient reasons and hence, prays for interference.

3. Per contra, Mr.V.G.Suresh Kumar, learned counsel appearing for the respondent would vehemently contend that since no proper, tenable and acceptable reasons have been put forth by the petitioners/applicants, the Tribunal was right in dismissing the application and prays for dismissal of this appeal.

4. This Court paid its best attention to the rival submissions and also perused the materials placed before it.

5. A perusal of paragraph 3 of the affidavit filed by the 1st appellant/1st applicant, in support of the application in IA.No.40/2010 would disclose that her husband died on 04.04.2009 and she was under bereavement and was supported by her parents from 20.04.2009 and 30.03.2010 and thereafter, after collecting the relevant records, tried to file an appeal and in the interregnum, she has fallen sick and as such, the delay of 82 days had occurred in filing the appeal and in the considered opinion of the Court, the 1st appellant/1st petitioner, being a widow, was supported by her parents and subsequently, fallen sick and therefore, she has taken all diligent steps to file the appeal and due to the reasons stated in paragraph 3 of her affidavit, the delay of 82 days had occurred. Since the delay has been properly explained, the Tribunal, ought to have condoned the delay.

6. In the result, the Civil Miscellaneous Appeal is allowed and the impugned order dated 28.09.2010 made in IA.No.40/2010 in D.No.107/2010 is set aside.

7. The Tribunal is directed to number the appeal, if the papers are otherwise in order and finally dispose of the same, as expeditiously as possible. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Railway Claims Tribunal
Chennai Bench.
2. The General Manager
Union of India owning
Southern Railway,
Chennai 600 003.

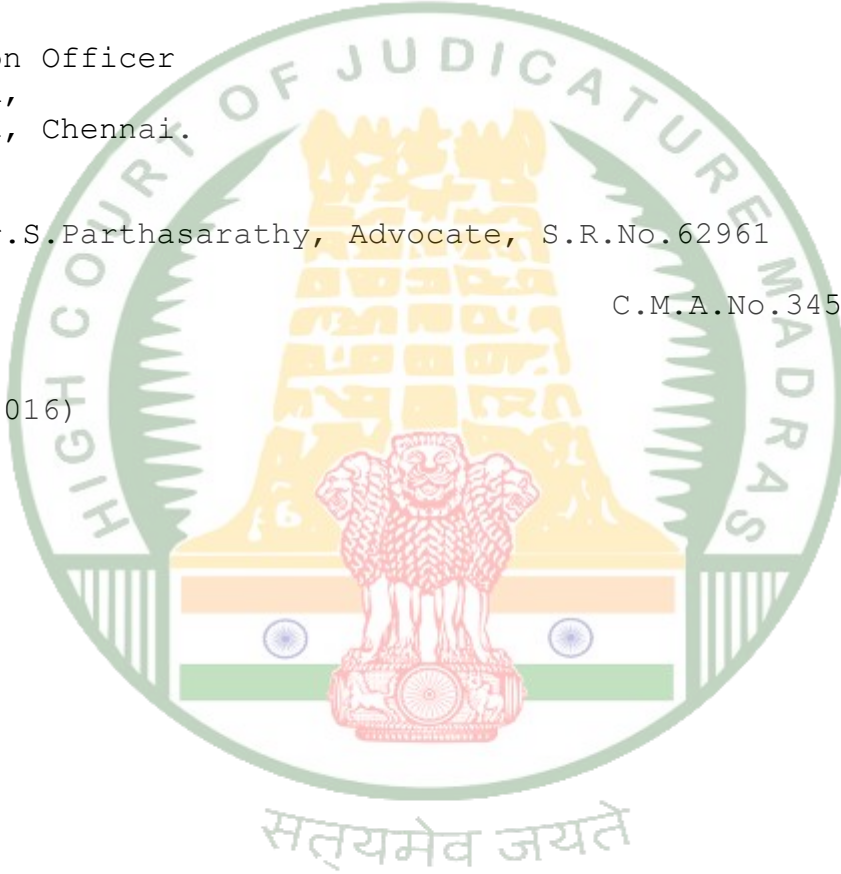
Copy to:-

The Section Officer
VR Section,
High Court, Chennai.

+1cc to Mr.S.Parthasarathy, Advocate, S.R.No.62961

C.M.A.No.3454 of 2010

KGK (CO)
CA (01/12/2016)



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