

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Wednesday, the Fifteenth day of March Two Thousand Seventeen

PRESENT

THE HON`BLE MR JUSTICE M.SUNDAR

CMP No.1516 to 1518 of 2017

IN SA.613/2007

1 K.ADHISESHAN (DIED) [PETITIONERS IN ALL THE PETITIONS]

2 ASUVATHAMMA

Vs

1 G.KUPPURAJ [RESPONDENTS IN ALL THE PETITIONS]

2 V.DHAKSHINAMURTHY

Petitions praying that in these circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased to

i) Condone the delay of 2466 days in filing petition to set-aside the abatement in SA.613 of 2007 and grant such other relief as deems fit in (CMP NO.1516/2017 IN SA NO.613/2017),

ii) Set-aside the order of abatement due to death of sole respondent in SA.613 of 2007 dated 01/08/2010 and grant such other relief as deems fit in (CMP NO.1517/2017 IN SA NO.613/2017) and,

iii) Bring on record the proposed appellant as legal heir of deceased appellant and rank him as 2nd appellant in S.A.613/2007 and grant such other relief as deems fit in (CMP NO.1518/2017 IN SA NO.613/2017) respectively.

Order : These petitions coming on for orders upon perusing the petitions and the respective affidavits filed in support thereof and upon hearing the arguments of M/S.R.MARGABANDHU, Advocate for the petitioner in all the petitions and of M/S.K.V.ANANTHA KRISHNAN for 2nd Respondent in all the petitions the court made the following order:-

This Second Appeal arises out of a suit for specific performance.

2. The sole appellant K.Adhiseshan died on 1.3.2010. Now it is represented that K.Adhiseshan died after leaving behind only one Legal representative viz., his wife Asuvathamma, who is now before this court and she is represented by the learned counsel Mr.R.Margabandhu.

3. These three applications namely 1516 to 1518 of 2017 have been taken out with prayers condone the delay in filing petition to set aside the abatement, set aside the abatement caused due to the death of the sole appellant and for bringing the legal representative of the deceased sole appellant on record, respectively.

4. Mr.K.V.Ananthakurishnan, learned counsel is present on behalf of the respondents.

5. A perusal of the affidavit filed in support of the petitions shows that the reasons given for the delay leaves much to be desired.

6. Affidavit is very cryptic and it merely says that the demise of the sole appellant was brought to the petitioner's (Asuvathamma) notice by way of a memo dated 1.12.2014 served on the counsel.

7. It is submitted at the Bar that the junior counsel, who received the memo, had not brought it to the notice of the counsel on record.

8. Mr.Ananthakrishnan, learned counsel appearing for the respondent, placed before me the judgment of the Supreme Court in H.DOHIIL CONSTRUCTIONS CO. PVT. LTD. v. NAHAR EXPORTS LTD. (2015 (5) CTC 534), which, in turn, has usefully referred to the principles laid down in ESHA BHATTACHARJEE v. MANAGING COMMITTEE OF RAGHUNATHPUR, NAFAR ACADEMY & OTHERS (2013 (5) CTC 547).

9. Though under the normal circumstances, a delay of this length deserves serious scrutiny, considering the nature of the matter (specific performance suit), the fact that the Original Suit is of the year 1996, this Second Appeal filed in this court itself is of the year 2007 and also taking into account that there is delay in bringing the legal representatives on record (in contradistinction to delay in filing), I am inclined to condone the delay by putting the petitioners on terms.

10. Accordingly, all the three petitions are allowed subject to the payment of cost of Rs.3,000/- (Rs.1,000/- in respect of each petition) to Cancer Institute, Chennai within a period of 2 weeks from the date of receipt of a copy of this order. If the cost is not paid within the time frame, all the three petitions will stand dismissed, automatically, without further reference to this court.

11. Ideally, the cost would have manifold more considering the length of delay and other attendant circumstances. As counsel for the petitioner has expressed some serious difficulty for his client to pay more and strenuously made a plea in this regard, costs have been lessened and quantified as above.

12. Registry shall amend the memo of the parties and carryout necessary amendments consequent upon these applications being allowed, on production of proof of cost being paid.

-sd/-
15/03/2017

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE DISTRICT MUNSIF
SHOLINGUR, VELLORE DISTRICT.

2 THE ADDITIONAL DISTRICT AND
SESSIONS JUDGE, (F.T.C-II) RANIPET,
VELLORE DISTRICT.

C.C. to M/S. R. MARGABANDHU Advocate on payment of necessary charges

The Government Advocate, High Court, Madras - 104.

Order

in
CMP.1516 to 1518/2017

in
SA.613/2007

Date :15/03/2017

From 26.2.2001 the Registry is issuing certified
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ADD 03.04.2017