



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Friday, the Sixteenth day of June Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice C.V.KARTHIKEYAN

CMP(MD) Nos.3814 to 3822 of 2017
IN
AS No.1005 of 1986

ANWAR BATCHA ... PETITIONER/APPELLANT NO.3
Vs

GULAM BIVI (DIED)

RABIA BEVI (DIED) ... NIL/APPELLANT 1&2

1 KAMALUDEEN

2 MOHAMED ISMAIL

3 MEHRUNNISA

4 DAWOOD BIBI ... RESPONDENTS 1 TO 4/APPELLANTS 4 TO 7

NOORJAHAN (DIED) ... NIL/APPELLANT NO.8.

5 AMMAJAN

6 RAHAMATHUNNISSA ...RESPONDENTS NO.5&6/APPELLANTS NO.9&10

(*) SETHU ODAYAR (DIED) ...NIL/APPELLANT NO.1

7 JAYARAMAN ...RESPONDENTS NO.7/RESPONDENTS NO.2

ABDUL RAHIM ROWTHAR (DIED) ...NIL/3RD RESPONDENT

YAKOOB HUSSAIN (DIED)) ...NIL/4TH RESPONDENT

CHANDRASU AMMAL(DIED)
D/O.SETHUR UDAYAR

8 RAMALINGAM

9 ANUSUYA

10 SUSEELA ... RESPONDENTS NOS.8 TO 10/
RESPONDENTS NOS.5 TO 7

11 THAVAKKAL BATCHA



12 ASIA BEGAM

13 MOHAMMED JAILANI

14 MINHAIJ BEHAM

15 SHAHUL HAMEEDU

16 HAJAMMAL

17 MEHARUNISHA

18 MOHAMMED DAVOOD

19 RAFFEEK AHMED

20 OJEER BEEVI

21 RABIYATHUL BAZIYA

22 BAZIR AHMED

23 NAZEEMA MUNAVARA

24 REYAZ AHMED

25 MOHAMMED RIZVAN

... RESPONDENTS NOS.11 TO 12/
PROPOSED RESPONDENTS NOS.8 & 9
LRS OF 1ST RESPONDENT

... RESPONDENTS NOS.13 TO 16/
PROPOSED RESPONDENTS NOS.10 TO 13
LRS OF 8TH RESPONDENT

... RESPONDENTS NOS.17 TO 25/
PROPOSED RESPONDENTS NOS.14 TO 22

(RESPONDENTS 21 TO 25 ARE RESPONDENTS
Lrs OF DECEASED SHEIK DAVOOD WHO IS
ONE OF THE Lrs OF DECEASED 4TH RESPONDENT
IN AS)

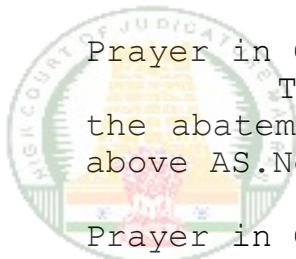
Prayer in CMP(MD)No.3814 of 2017:- Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condone the delay of 9043 days in seeking to set-aside the abatement caused by deceased Gulam Bivi the 1st appellant in the above AS.No.1005 of 1986.

Prayer in CMP(MD). 3815/ 2017 :

To set-aside the abatement caused by Gulam Bivi deceased 1st appellant in the above AS.No.1005 of 1986.

Prayer in CMP(MD). 3816/ 2017 :

To bring on record of the 9 & 12 respondents herein who are the Legal Representatives of the deceased 1st Appellant and rank them as Respondents 8 & 9 in the AS.No.1005 of 1986 in the above



Prayer in CMP(MD). 3817/ 2017 :

To condone the delay of 3659 days in seeking to set-aside the abatement caused by deceased Noorjahan the 8th appellant in the above AS.No.1005 of 1986.

Prayer in CMP(MD). 3818/ 2017 :

To set-aside the abatement caused by Noorjahan deceased 8th appellant in the above AS.No.1005 of 1986.

Prayer in CMP(MD). 3819/ 2017 :

To bring on record of the 13 to 16 respondents herein who are the Legal Representatives of the deceased 8th Appellant and rank them as respondents 10 to 13 in the AS.No.1005 of 1986 in the above Appeal suit.

Prayer in CMP(MD). 3820/ 2017 :

To condone the delay of 4525 days in seeking to set-aside the abatement caused by deceased Yakoob Hussain the 4th respondent in the above AS.No.1005 of 1986.

Prayer in CMP(MD). 3821/ 2017 :

To set-aside the abatement caused by Yakoob Hussain deceased 4th respondent in the above AS.No.1005 of 1986.

Prayer in CMP(MD). 3822/ 2017 :

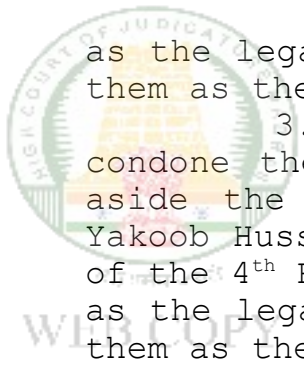
To bring on record of the 17 to 25 respondents herein who are the Legal Representatives of the deceased 4th respondent and rank them as respondents 14 to 22 in the AS.No.1005 of 1986 in the above Appeal Suit.

Prayer in AS.No.1005 of 1980: A.S.No.1005 of 1986 against the Judgment and Decree of the Learned Subordinate Judge of Thanjavur dated the 9th day of August 1985 in O.S.No.129 of 1980 on the file of this Court.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.S.SRINIVASARAGHAVAN, Advocate for M/S.N.TAMILMANI, Advocate for the Petitioner and Mr.T.A.Ebenezer, Advocate for R2 and Mr.R.A.Manimaran, Advocate for R7, the Court made the following order:-

CMP(MD)Nos.3814 to 3816 of 2017 have been filed to condone the delay of 9043 days in filing the application to set aside the abatement caused by the death of the 1st Appellant Gulam Bivi, to set aside the abatement caused due to the death of the 1st Appellant and to bring on record the Respondents 9 and 12 as the legal representatives of the deceased 1st Appellant and rank them as the Respondents 8 and 9 in the appeal, respectively.

2. CMP(MD)Nos.3817 to 3819 of 2017 have been filed to condone the delay of 3659 days in filing the application to set aside the abatement caused by the death of the 8th Appellant Noorjahan, to set aside the abatement caused due to the death of the 8th Appellant and to bring on record the Respondents 13 to 16



as the legal representatives of the deceased 8th Appellant and rank them as the Respondents 10 to 13 in the appeal, respectively.

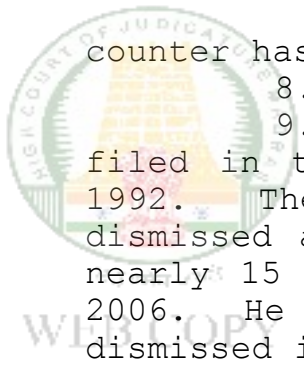
3. CMP(MD)Nos.3820 to 3822 of 2017 have been filed to condone the delay of 4525 days in filing the application to set aside the abatement caused by the death of the 4th Respondent, Yakoob Hussain, to set aside the abatement caused due to the death of the 4th Respondent and to bring on record the Respondents 17 to 25 as the legal representatives of the deceased 4th Respondent and rank them as the Respondents 14 to 22 in the appeal, respectively.

4. In all these applications, the 3rd Appellant, Anvar Batcha has filed affidavits in support of the petitions. Primarily, this court has to consider the reasons for the delay of 9043 days, 3659 days and 4525 days in seeking to set aside the abatement caused by the death of the 1st Appellant, 8th Appellant and the 4th Respondent, respectively as stated in CMP(MD)Nos.3814, 3817 and 3820 of 2017.

5. In the affidavits filed in support of the applications, it is stated that the 7th Respondent and his father had filed the suit in OS.No.129 of 1980 against one Abdul Rahim Rowther and three others, including the father of the deponent of the affidavit, by name, Mohamed Ibrahim, who was the 2nd Defendant. The suit was filed in OS.No.129 of 1980 in the Sub Court, Thanjavur. Even pending the suit, the father of the deponent of the affidavit died and he was brought on record along with sisters. According to him, the Trial Court erroneously decreed the suit by judgement and decree dated 9.8.1985. This appeal has been filed as against the said judgement and decree. However, 1st, 2nd and 3rd Defendants in the suit did not file any appeal. It had been stated that he went abroad in the year 1992 and returned to India in the year 2006. Subsequently, the Plaintiff filed EP.No.171 of 2012 before the Sub Court, Thanjavur, for execution of the decree in OS.No.129 of 1980. It was only thereafter that he began to make a search regarding the appeal and found that the appeal was dismissed on 21.1.2002. He, thereafter, obtained a certified copy of the order of dismissal on 16.9.2014. He then found that the 1st Appellant Gulam Bivi, 8th Appellant, Noorjahan and the 4th Respondent Yakoob Hussain had died in the interregnum period. Consequently, he searched and obtained documents regarding the particulars of the legal representatives of the deceased Appellants and the Respondent. He, thereafter, found that the some of the legal heirs also died. Thereafter, he filed the present applications on 22.6.2016, seeking to condone the delay.

6. A better affidavit had been filed by the Petitioner on 3.1.2017, stating that he worked in lot of Foreign countries, including Dubai and Muscat. He has also stated that he was unaware of the dismissal of the appeal for non prosecution till 2012. He has, thereafter, given the details of the persons, who had died. It is also seen that he has received death certificates and legal heirship certificates from 1986 onwards and till 2015. He, therefore, claimed that the delay should be condoned.

7. A counter has been filed, stating that an execution petition had been filed in EP.No.171 of 2012 and a draft sale deed had also been produced before the EP court and it is pending for execution of sale through court. It had been further stated that there is no bona fide in the reasons stated above. A separate



counter has also been filed on behalf of the 13th Respondent.

8. I have heard the learned counsel.

9. A perusal of the records reveals that the appeal was filed in the year 1986. The Petitioner went abroad in the year 1992. The appeal was dismissed on 21.1.2002. The appeal was dismissed after it had been pending on the file of this court for nearly 15 years. The Petitioner came back to India in the year 2006. He came to know in the year 2012 that the appeal had been dismissed in 2002. Between 2002 and 2012, he had not been interested in prosecuting the appeal. He was also not interested in determining the fate of the appeal. He obtained orders only in the year 2014 and filed the petitions only in the year 2016.

10. In **2009 11 SCC 183 (Katari Suryanarayana and others Vs. Koppiseti Subba Rao and others)**, the Honourable Supreme Court, while considering the applications to condone the delay of 2381 days and 2601 days in filing the applications to set aside the abatement, had held that when the parties in that case were neighbours, it was unbelievable that the death of one of the parties would not have been known and consequently, declined to condone the delay.

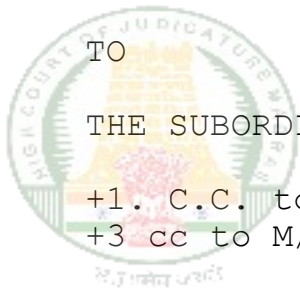
11. In **2010 8 SCC 685 (Balwant Singh (dead) Vs. Jagdish Singh and others)**, it was also held that sufficient cause should also include diligence and there should not be deliberate negligence on the part of the Petitioners for filing applications. In **2015-1-SCC 680 (H. Dohil Constructions Company Private Limited vs Nahar Exports Limited and another)**, it was held by the Honourable Supreme Court that the court should be vigilant and not to expose the other side unnecessarily to face such litigation.

12. In all the present cases, a careful reading of the affidavits shows that the deponent has actually not explained any reason for the delay in filing the applications. He has, in fact, not given any reason. He has shifted the blame. He has stated that he went abroad in 1992 and came back to India in 2006. He was one of the legal heirs and there is also no reason given as to what the other Appellants were doing while they were in India. The appeal was dismissed after a period of 15 years in 2002. Even at that time, the applications to condone the delay had not been filed. The Appellant has not pleaded any bona fide reasons to seek indulgence of this court to condone the delay. There is a valuable decree obtained by the Respondent and that should not be frustrated by this court for this inordinate delay on the part of the Appellant. I find no reason to condone the delay. Accordingly, the applications in CMP(MD)Nos.3814, 3817 and 3820 of 2017 to condone the delay are dismissed. Consequently, the other applications in CMP(MD)Nos.3815, 3816, 3818, 3819, 3821 and 3822 of 2017 are also dismissed.

sd/-

16/06/2017

/ TRUE COPY /



TO

THE SUBORDINATE JUDGE, THANJAVUR.

+1. C.C. to M/S.T.A.EBENEZER, Advocate, SR.No.24427

+3 cc to M/R.N.TAMILMANI, Advocate, SR.Nos.24382 to 24384

srcm

CSL/RR-BS/SAR-I/21.06.2017 :6P/6C

ORDER

IN

CMP(MD) Nos.3814 to 3822 of 2017

IN

AS No.1005 of 1986

Date :16/06/2017