



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

Wednesday, the Fourteenth day of March Two Thousand Eighteen

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PRESENT

The Hon`ble Mrs.Justice S.RAMATHILAGAM

CMP(MD) Nos.3416 to 3419 of 2016

IN

SA(MD) No.307 of 2005

1 THASMA VISWANATH (DIED) / SOLE APPELLANT
2 T.V.KUPPAMMAL
3 T.V.MOTHILAL
4 GIRIJA
5 T.V.GOVINDARAMAN
6 MAHALAKSHMI ... PETITIONERS 2-6/ PROPOSED
APPELLANTS 2-6
Vs

1 STATE OF TAMILNADU,
THROUGH THE DISTRICT COLLECTOR,
RAMANATHAPURAM.

2 THE ASSISTANT EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT, DIVISION-II,
GANDHIJI ROAD, PARAMAKUDI. ... RESPONDENTS / RESPONDENTS

PRAYER IN CMP(MD)No.3416/2016:-

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 3597 days in filing the petition to set aside the abatement caused due to the death of Thasma Viswanath, the sole appellant in the above SA(MD)No.307 of 2005, and thus render justice.

Prayer in CMP(MD). 3417/ 2016 :

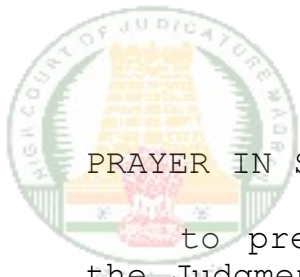
To condone the delay of 3489 days in filing the petition to set aside the order dated 20.06.2006 passed in the above SA(MD) No.307 of 2005, and thus render justice.

Prayer in CMP(MD). 3418/ 2016 :

To set aside the abatement caused due to the death of Thasma Viswanath, the sole appellant in the above SA(MD)No.307 of 2005, and thus render justice.

Prayer in CMP(MD). 3419/ 2016 :

To bring on record the petitioners 2 to 6 herein, the legal heirs of deceased sole appellant, as appellants 2 to 6 in the above SA(MD)No.307 of 2005, and thus render justice.



PRAYER IN SA(MD) No.307 of 2005:-

to prefer this Memorandum of Grounds of Second Appeal against the Judgment and decree passed in A.S.No.112 of 1999 on the file of Principal District Judge, Ramanathapuram, dated 27.09.2000, confirming the judgment and decree passed in O.S.No.84 of 1995 on the file of District Munsif, Paramakudi, dated 19.06.1998

ORDER : These petitions coming on for orders upon perusing the petitions and the affidavits filed in support thereof and upon hearing the arguments of Mr.M.R.SREENIVASAN, Advocate for the petitioners in all the petitions and of Mr.A.THIYAGARAJAN, Government Advocate for R1 and R2, in all petitions, the court made the following order:-

These petitions have been filed seeking to condone the delay of 3597 days in filing a petition to set aside the abatement, to condone the delay of 3489 days in filing the petition to set aside the dismissal order dated 20.06.2006 in the above second Appeal and to restore the appeal, to set aside the abatement caused due to the death of sole appellant and to bring on record the petitioners 2 to 6 as appellants in the Second Appeal.

2.The petitioners state that the sole appellant had filed this Second Appeal against the judgment and decree passed in A.S.No.112 of 1999 on the file of the Principal District Judge, Ramanathapuram, confirming the judgment and decree passed in O.S.No.84 of 1995. The Second appeal was dismissed for non payment of batta on 20.06.2006. In the mean time the sole appellant died on 05.11.2005. The learned counsel for the petitioner informed the petitioner that he had arranged to pay batta through his clerk and has also arranged to file L.R application. Unfortunately, the clerk has left for Chennai for seeking other job. When the similar appeal which was filed by 3d party was disposed of, at that time only the petitioner came to know about the non-payment of batta and not taking steps to set aside the abatement. Hence the delay has been occurred for taking steps in filing a petition to set aside the dismissal order and to set aside the abatement. Hence, the delay is neither willful nor wanton. Hence, the delay may be condoned.

3.The learned counsel for the respondent is present and vehemently opposed the petitions filed by the petitioners.

4.Considering the facts and circumstances of the case, the abnormal delay of 3597 and 3489 days in filing the petitions are all seemed to be baseless and not considered to be a bonafide one. If really the petitioner is very much aggrieved by the order and he is very much conscious about the proceedings, he would have instructed the counsel for proceeding with the case in time. Hence, the reason stated by the petitioner is not appeared to be a sincere effort taken by them for proceeding with the case in time.



5. For the reasons stated above, these petitions are dismissed.

sd/-

14/03/2018

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE PRINCIPAL DISTRICT JUDGE,
RAMANATHAPURAM
- 2 THE DISTRICT MUNSIF,
PARAMAKUDI, RAMANATHAPURAM DISTRICT

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JAM/05/04/2018/ PN / SAR 4 /3p-3c

ORDER
IN
CMP (MD) Nos.3416 to 3419 of 2016
IN
SA (MD) No.307 of 2005
Date :14/03/2018