

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.M.P.s 1060 to 1062 of 2010

and

C.M.P. 9502 of 2004

and

S.A. SR 26653 2004

Tamil Nadu Electricity Board,
rep. by Assistant Executive Engineer,
Gudiyattam. ... Petitioner/Appellant

Vs.

R.Balakrishnan ... Respondent/Respondent

Prayer in C.M.P. 4502 of 2004 :- This petition has been filed under Section 5 of Limitation Act praying to condone the delay of 8 days in filing the Second Appeal against the judgment and decree dated 27.11.2003 made in A.S.No.13/2003 by the learned Sub-Judge, Gudiyattam, confirming the judgment and decree dated 10.09.2003 made in O.S.No.357 of 2002 by the learned District Munsif, Gudiyattam, Vellore District.

Prayer in C.M.P. 1060 of 2010 :- This petition has been filed under Section 5 of Limitation Act praying to condone the delay of 1841 days in filing the set aside abatement.

Prayer in C.M.P. 1061 of 2010 :- This petition has been filed under Order 22 Rule 9 of C.P.C. praying to set aside the abatement caused due to the death of respondent Thiru.Balakrishnan.

Prayer in C.M.P. 1062 of 2010 :- This petition has been filed under Order 22 Rule 4 of C.P.C. praying to bring the legal representatives of the respondent Balakrishnan i.e. Wife (1) Tmt. Kamalammal, aged about 67 years, sons viz., B.Vijayakumar, aged about 51 years, and B.Sukmar, aged about 49 years and daughter Tmt. Sasireka, aged about 47 years, all are residing at Hyderpuram Village, H/o. Pasumathur, Katpadi Taluk, Vellore District on record in the above Second Appeal.

Prayer in S.A. SR 82247 of 2002 :- This Second Appeal has been filed under 100 of C.P.C. against the judgment and decree dated 27.11.2003 made in A.S.No.13 of 2003 by Subordinate Judge, Gudiyattam confirming the judgment and decree dated 10.09.2003 made in O.S.No.357 of 2002 on the file of District Munsif Court, Gudiyattam.

For Appellant

: Mr.V.Viswanathan
for Mr.N.Muthuswami.

ORDER

These Civil Miscellaneous Petitions have been filed to condone the delay of 8 days in filing the above Second Appeal, to bring the legal representatives of deceased 1st respondent, and also to set aside the abatement caused due to the death of sole respondent and to condone the delay of 1814 days in filing the petition to set aside the abatement.

2. The deceased respondent herein has filed a suit for mandatory injunction directing the respondent to transfer the agriculture electricity connection from old closed well to a new well in the same survey number. The suit has been decreed by the Trial Court, and the appeal filed by the respondent Board was also dismissed. Now, challenging the judgment and decree, the present Second Appeal has been filed with the delay of 8 days in filing the above appeal. Now, pending appeal, sole respondent/plaintiff died and to bring his legal representatives, the above Civil Miscellaneous Petitions have been filed.

3. I have heard the learned counsel appearing for the petitioner/appellant and perused the relevant records carefully.

4. The suit was filed in the year 2002 seeking for mandatory injunction to restore the electricity service connection. The Trial Court has decreed the suit, and the appeal

filed by the Board was also dismissed in the year 2003. Now, after 16 years, the present petitions have been filed on the ground that pending appeal, the sole respondent/plaintiff died, and to bring the legal representatives on record. I have carefully gone through the reasons stated in the petitions to condone delay and to set aside the abatement, there is no valid reason has been given by the petitioner for condoning the delay of 1841 days in filing the petition to set aside the abatement. That apart, considering the fact that the suit has been decreed as early as in the year 2003, and the appeal filed by the appellant was also dismissed in the year 2004, I am not inclined to allow these petitions at this stage. Hence, these Civil Miscellaneous Petitions stands dismissed. No costs. Consequently, the S.A. SR. is also stands dismissed as abated.

सत्यमेव जयते

25.03.2019

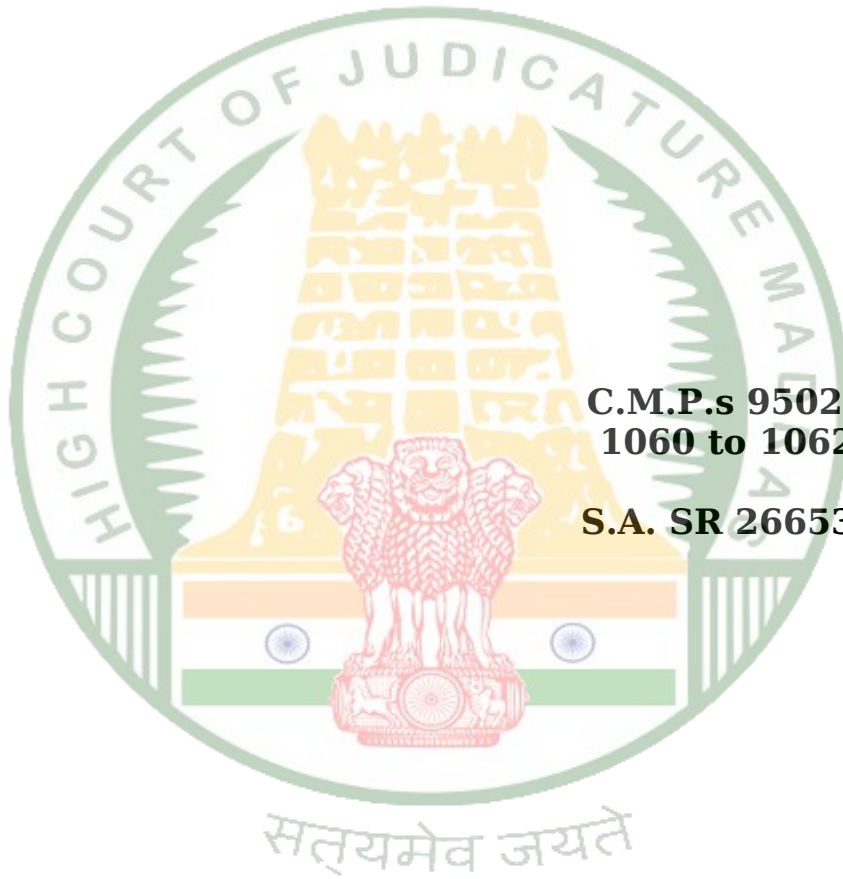
Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To

Subordinate Judge,
Gudiyattam.

V.BHARATHIDASAN,J.

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**C.M.P.s 9502 of 2004,
1060 to 1062 of 2010
and
S.A. SR 26653 of 2004**

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