

C.M.P.Nos.2690, 2691 and 2692 of 2017
in C.M.S.A.No.2 of 2005

T.RAJA, J.

The petition in C.M.P.No.2690 of 2017 has been filed to condone the delay of 2218 days in seeking to set aside the abatement caused due to the death of the first appellant in C.M.S.A.No.2 of 2005 on the file of this Court.

2. The affidavit filed in support of the petition shows that the first appellant Kalyani died on 17.08.2010. The second appellant, being aware of the death of the first appellant has not diligently filed an application to bring on record the legal representatives of the deceased Kalyani. After a huge and unexplained delay of 2218 days, ie., after almost seven long years, in the month of February 2017, an application to condone the delay has been filed.

3. The suit in O.S.No.46 of 2001 was filed for recovery of a sum of Rs.26,700/-. After the suit was decreed, an Execution Petition in E.P.No.75 of 2002 was filed. During the pendency of the execution petition, E.A.No.463 of 2003 under Order XXI Rule 58 of CPC, was filed in the month of August 2003. The said E.A.No.463 of 2003 was dismissed by an order dated 28.08.2003, as against which C.M.A.No.6 of 2004 was filed, which was also dismissed by the judgment and decree dated 30.09.2004 on the file of the Principal Subordinate Judge, Villupuram. The present C.M.S.A.No.2 of 2005 is filed against the aforesaid judgment and decree dated 30.09.2004.

T.RAJA, J.

KST

4. The Civil Miscellaneous Second Appeal was admitted by this Court and interim stay was granted by an order dated 01.02.2005. When the appeal was pending, the first appellant Kalyani died. For the reasons best known to him, the second appellant has not acted diligently to bring the legal representatives on record, which shows that, by enjoying the order of interim stay granted by this Court at the time of entertaining the appeal, the second appellant has adopted the delaying tactics to drag on the matter.

5. Therefore, as the suit is for recovery of money and that no sufficient reason has been attributed for the huge and inordinate delay of 2218 days, the petition in CMP No.2690 of 2017, filed for condoning the delay of 2218 days in seeking to set aside the abatement caused due to the death of the first appellant, is dismissed. In view of the same, the other CMP Nos.2691 of 2017 to set aside the abatement and CMP No.2692 of 2017 to bring on record the legal representatives of the deceased appellant, are also dismissed.

WEB COPY**30-07-2019**

KST

**CMP Nos.2690 to 2692 of 2017
in CMSA No.2 of 2005**