



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

Monday, the First day of April Two Thousand Nineteen

PRESENT

The Hon`ble Mrs.Justice J.NISHA BANU

CMP(MD) Nos.1546 and 1547 of 2018

IN

CRP(MD) No.1631 of 2011

1 G.MEENAMMAL (DIED) ... SOLE PETITIONER IN C.R.P.
IN BOTH THE PETITIONS

2. G.MUTHUKRISHNAN

3 G.SELVAM

4 KARUPPAYEE AMMAL ... PETITIONERS/PROPOSED PETITIONERS
2 to 4/LRs OF THE DECEASED
1st PETITIONER
IN BOTH THE PETITIONS

Vs

S.GORI BIVI ... RESPONDENT/RESPONDENT
IN BOTH THE PETITIONS

PRAYER IN CMP(MD) Nos.1546 of 2018

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to pass an order condoning the delay of 537 days in filing application to set aside abatement of the civil revision petition caused due to the death of the first petitioner and thus render justice.

PRAYER IN CMP(MD) Nos.1547 of 2018

To pass an order bringing on record the petitioners 2 to 4 as the legal representatives of the deceased first petitioner and arraying them as petitioners 2 to 4 in the main Civil Revision Petition in C.R.P.(MD) No. 1631 of 2011 and thus render justice.

Prayer in CRP(MD). 1631/ 2011 :

To call for records and set aside the order dated 29.07.2010 passed in RCA No.28/2008 on the file of the Principal Subordinate Judge cum Rent Control Appellate Authority, Madurai confirming the order dated 27.06.2008 passed in RCOP No.173/2001 on the file of the Additional District Munsif cum Rent Controller of Madurai Town and thus allow this C.R.P. and pass such other further orders as may be deemed fit and proper in the circumstances of the case and thus render justice.



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.T.R.JEYAPALAM, Advocate for the petitioner, in both the petitions, and of MR.RAJARAMAN, Advocate on behalf of the Respondent, in both the petitions, the court made the following order:-

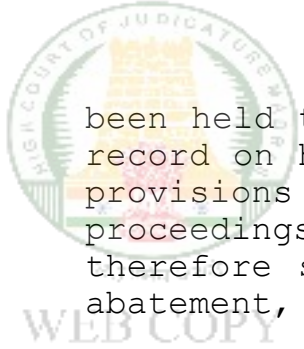
C.M.P(MD)No.1546 of 2018 has been filed by the petitioners seeking to condone the delay of 537 days in filing a petition to set aside the abatement caused due to the death of first petitioner in the above revision petition.

2.C.M.P(MD)No.1547 of 2018 has been filed by the petitioners seeking to bring on record the petitioners 2 to 4, as the legal representatives of the first petitioner and arraying them as petitioners 2 to 4 in the above revision petition.

3.On the side of the respondent, counter has been filed, wherein it is stated that the petitioners filed a memo in the execution proceedings before the Court below to the effect that there are five legal representatives to the deceased first petitioner. The respondent also filed another R.C.O.P.No.233 of 2008 for fixation of fair rent and against the order passed in the said petition, the first petitioner preferred R.C.A.No.10 of 2014 and during pendency of the same, the first petitioner died. All the legal heirs of the deceased 1st petitioner filed I.A.No.223 of 2016 seeking to implead them as parties and the same was allowed on 04.04.2016. But these petitions have been filed to implead only three of the legal heirs of the deceased first petitioner. Thus, she prayed to dismiss the petitions.

4.The learned counsel for the petitioners would state that the first petitioner passed away on 08.06.2015, leaving behind the petitioners and five others. The petitioners 2 to 4 were living with the deceased first petitioner / tenant till her lifetime and they are continuing in occupation of the demised property till date. The other sons and daughters are not occupying the demised property. The petitioners 2 to 4 alone had inherited the estate of the deceased first petitioner so far as the subject matter of this litigation. The proposed parties are illiterate persons and they do not have any acquaintance in legal matters. Therefore, the delay has occurred. Thus, he prayed to allow the petitions.

5.The learned counsel for the petitioners would rely upon the Judgment of the Hon'ble Supreme Court in ***Harihar Prasad Singh and others v. Balmiki Prasad Singh and others*** reported in ***AIR 1975 Supreme Court 733***, wherein it has been held that the estate of the deceased was fully represented by the heirs who had been brought on record and these heirs represented the absent heirs also, who would be equally bound by the result. He would also rely upon the Judgment of this Court in ***S.M.Jaffar Mohideen and others v. E.Fathima and others*** reported in ***2011(1) CTC 276***, wherein it has



been held that legal heirs of the deceased tenant can be brought on record on his death and such proceedings are covered by Rule 25 and provisions contained in Order 22, Rule 4 are not applicable to such proceedings. The learned counsel for the petitioners would therefore submit that a separate petition seeking to set aside the abatement, has not been filed.

6.The learned counsel for the respondent would submit that since all the legal heirs were impleaded in the execution proceedings and in the connected rent control appeal, all the legal heirs of the deceased first petitioner have to be impleaded. Thus, he prayed to dismiss the petitions.

7.Heard the learned counsel for the parties and perused the materials available on record.

8.These petitions have been filed by the petitioners seeking to condone the delay of 537 days and also to set aside the abatement caused due to the death of first petitioner in the above revision petition. It is seen that the three of the legal heirs of the deceased first petitioner filed these petitions. The Hon'ble Supreme Court in ***Harihar Prasad Singh and others v. Balmiki Prasad Singh and others*** reported in ***AIR 1975 Supreme Court 733*** has held as follows:

"... As pointed out by this Court in (1965) 1 SCR 231 = (AIR 1965 SC 1049), the almost universal consensus of opinion of all the High Courts is that where a plaintiff or an appellant after diligent and bona fide enquiry ascertains who the legal representatives of a deceased defendant or respondent are and brings them on record within the time limited by law, there is no abatement of the suit or appeal, that the impleaded legal representatives, sufficiently represent the estate of the deceased and the decision obtained with them on record will bind not merely those impleaded but the entire estate including those not brought on record.

33.It was observed by the Madras High Court in Kadir Mohideen v. Marakayyar Muthukrishna Ayyar, (1903) ILR 26 Mad 230) :

"In our opinion a person whom the plaintiff alleges to be the legal representative of the deceased defendant and whose name the Court enters on the record in the place of such defendant sufficiently represents the estate of the deceased for the purpose of the suit and in the absence of any fraud or collusion the decree passed in such suit will bind such estate If this were not the law, it would, in no few cases, be practically impossible to secure a complete representation of a party dying pending a suit and it would be specially so in the case of a Muhammadan party and there can be no hardship in a provision of law by which a party dying during the pendency of a suit, is fully represented for the purpose of the suit, but only for that purpose, by a person whose name is entered on the record in place of the deceased party under sections 365, 367 and 368 of the Civil Procedure Code, though such



person may be only one of several legal representatives or may not be the true legal representative".

After referring to this statement of the law, this Court in (1965) 1 SCR 231 = (AIR 1965 SC 1049) went on to remark:

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"In a case where the person brought on record is a legal representative we consider that it would be consonant with justice and principle that in the absence of fraud or collusion the bringing on record of such a legal representative is sufficient to prevent the suit or the appeal from abating."

In 1966 Supp SCR 22 = (AIR 1967 SC 49) on the death of one of the plaintiffs-appellants in an appeal pending before the Subordinate Judge his widow and the major son were substituted on record as heirs. It was later discovered that the deceased had left some other heirs besides the two. The respondents raised an objection that as some of the heirs of the deceased had been left out and there could be no question of want of knowledge of the existence of these heirs on the part of the widow and the major son who had applied for being brought on record, the appeal abated. It would be noticed that the position is exactly the same here. This Court held :

"The estate of the deceased was fully represented by the heirs who had been brought on the record and these heirs represented the absent heirs also, who would be equally bound by the result."

It was observed :

"Even where the plaintiff or the appellant has died and all his heirs have not been brought on the record because of oversight or because of some doubt as to who are his heirs, the suit or the appeal, as the case may be, does not abate and the heirs brought on the record fully represent the estate unless there is fraud or collusion or there are other circumstances which indicate that there has not been a fair or real trial or that against the absent heir there was a special case which was not and could not be tried in the proceedings."

After referring to the decisions in Mohd. Sulaiman Sahib v. N.C.Mohd. Ismail Sahab [1966 (1) SCR 937 = (AIR 1966 SC 792) and (1965) 1 SCR 231 = (AIR 1965 SC 1049) (supra), the Court went on to observe :

"It will be noticed that there is one difference between the present case and the two cases on which reliance has been placed on behalf of the appellants. This is not a case where a plaintiff or an appellant



applies for bringing the heirs of the deceased defendant or respondent on the record; this is a case where one of the appellants died and his heirs have to be brought on record. In such a case there is no question of any diligent or bona fide enquiry for the deceased appellant's heirs must be known to the heirs who applied, for being brought on the record. Even so we are of opinion that unless there is fraud or collusion or there are other circumstances which indicate that there has not been a fair or real trial or that against the absent heir there was a special case which was not and could not be tried in the proceeding, there is no reason why the heirs who have applied for being brought on record should not be held to represent the entire estate including the interests of the heirs not brought on the record.".

9.This Court in **S.M.Jaffar Mohideen and others v. E.Fathima and others** reported in **2011(1) CTC 276** has held as follows:

"Legal heirs of deceased tenant can be brought on record on his death and such proceedings are covered by Rule 25 and provisions contained in Order 22, Rule 4 are not applicable to such proceedings. Section 5 is applicable to application under Rule 25 and delay in bringing L.Rs. on record can be condoned for sufficient reasons. Application for setting aside abatement is closed".

10.In view of the above, this Court is of the considered view that impleadment of all the legal heirs is not necessary and the estate of the deceased was fully represented by the heirs who had been brought on the record and these heirs represented the absent heirs also, who would be equally bound by the result. Accordingly, considering the reasons stated in the affidavits filed in support of the petition and also considering the length of delay, this Court is inclined to allow these petitions subject to the payment of cost of Rs.2,000/- (Rupees two thousand only) to the Chief Justice Relief Fund, within a period of one week from the date of receipt of copy of this order, failing which these petitions shall stand dismissed automatically without any further reference to this Court.

11.The petitions are accordingly ordered.

12.In the event of payment of cost, the Registry is directed to carry out necessary amendment in the main revision petition.

sd/-

01/04/2019

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TO

1 THE PRINCIPAL SUBORDINATE JUDGE
CUM RENT CONTROL APPELLATE AUTHORITY,
MADURAI

WEB COPY

2 THE ADDITIONAL DISTRICT MUNSIF CUM
RENT CONTROLLER, MADURAI

COPY TO:- THE SECTION OFFICER, (THE CHIEF JUSTICE RELIEF FUND)
ACCOUNTS SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to Mr.T.R.JEYAPALAM Advocate SR.No.6062

ORDER

IN

CMP(MD) Nos.1546 and 1547
of 2018

IN

CRP(MD) No.1631 of 2011

Date :01/04/2019

MSI/PN/SAR 4/05.04.2019/6P-5C