

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.P.Nos.1735, 1738 & 1743 of 2020
in S.A.No.5 of 2006

Idayath Ali

..Petitioner in all C.M.Ps

Vs.

1.S.M.Abusaleha(Died)

2.Nihayathunisha

3.S.A.Ashraf Ali

4.Askar Ali

5.Zeenath Unnisha Beham

6.S.A.Ajmat Ali

7.Soukat Ali

8.S.A.Liyakat Ali

9.Mohammed Ali @ S.A.Shan Basha

10.Abdul Suban Sahib

11.Atthiya

12.Sabika

13.Shareena

14.Javeeth

15.Balkees

16.Ameen

17.Mustak Ahmed

18.Mansur

19.Riswan

20.Rabia Begum

21.Nabiz

22.Suhail

..Proposed respondents in all C.M.Ps

Prayer in C.M.P.No.1735 of 2020: The Civil Miscellaneous Petition is filed under Section 5 of the Limitation Act, praying to condone the delay of 2464 days in filing the petition to set aside the abatement caused due to death of the 1st respondent S.M.Abusaleha.

Prayer in C.M.P.No.1738 of 2020: The Civil Miscellaneous Petition is filed under Order 22 Rule 9 of C.P.C, praying to to set aside the abatement caused due to death of the 1st respondent S.M.Abusaleha.

Prayer in C.M.P.No.1743 of 2020: The Civil Miscellaneous Petition is filed under Order 22 Rule 4 of C.P.C, praying to bring on record the legal representatives of the deceased 1st respondent S.M.Abusaleha.

For petitioner : Mr.A.Sundaravadhanan

COMMON ORDER

(The case has been heard through video conference)

These applications are taken out by the sole appellant to condone delay of 2464 days in filing the petition to set aside the abatement caused due to death of the 1st respondent and to bring the legal representative of the deceased 1st respondent.

2. This Court caused notice to the proposed parties in these three applications. Since notice could not be served, substitute service by paper publication was ordered and the same was effected in one issue of Malaimalar, Coimbatore edition on 10.03.2020.

3. The learned counsel for the appellant would state that the appellant is employed in Middle East and he was not aware of the demise of the 1st respondent. Recently, he came to know about it, immediately he has taken out these petitions (i) to condone the delay of 2464 days in filing the petition (ii) to set aside the abatement and (iii) to bring on record the legal representative of the 1st respondent. The delay of 2464 days is neither wilful not wanton. Further no prejudice will be caused to the respondent if the petitions are allowed

4. Though the delay appears to be enormous, the cause shown by the appellant is genuine. Hence, this Court condone the delay and allow these civil miscellaneous petitions.

5. The learned counsel for the appellant is directed to take private notice on the impleaded respondent in S.A.No.5 of 2006 returnable by four weeks.

6. Post the matter after four weeks.

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Note: The Registry is directed to carry out necessary amendment.

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DR.G.JAYACHANDRAN,J.

rpl



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