



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

Monday, the Seventeenth day of August Two Thousand and Twenty

PRESENT

The Hon'ble Mrs.Justice J.NISHA BANU

CMP(MD) . No.3783 of 2020
in
S.A.No.45 of 2003

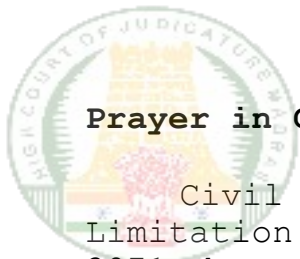
1.SETHURAJ ...1st PETITIONER/1st APPELLANT
2.AATHIAPPA NAIKER (DIED) ...2nd APPELLANT
3.SUBULAKSHMI
4.NARAYANASAMY
5.SARASWATHI ...PETITIONERS 2 TO 4/PROPOSED APPELLANTS 3 TO 5

Vs

1 CHINNASAMY NAIKER
2 RENGASAMY NAIKER
3 NARAYANASAMY NAIKER (DIED)
4 AYYASAMY NAIKER
5 RAMASUBBU ...RESPONDENTS 1 TO 4/RESPONDENTS 1,2 AND 4,5
6 THE TAMIL NADU ELECTRICITY BOARD,
PALAYAMKOTTAI, TIRUNELVELI DISTRICT,
THROUGH ITS SUPERINTENDING ENGINEER,
MAHARAJA NAGAR, PALAYAMKOTTAI.
7 ASSISTANT ELECTRICAL ENGINEER,
(DISTRIBUTION) T.N.E.B.,TIRUVENGADAM.
...RESPONDENTS 6 & 7/ RESPONDENTS 6 & 7
8 VENKATESHWARI ...RESPONDENT 8/ROPOSED RESPONDENT 8

Prayer in CMP(MD) . No.3783 of 2020:-

Civil Miscellaneous Petition filed under Order 41, Rule 19, read with Order 43 Rule 1 and 2 and Section 151 of Civil Procedure Code, praying this Hon'ble Court to set aside the order of dismissal for default dated 20.09.2019 made in S.A.No.45/2003 and to restore the C.M.P(MD).No.9098 to 9100 of 2018 in S.A.No.45 / 2003.



Prayer in CMP(MD).No.9098 of 2018 :

Civil Miscellaneous Petition filed under Section 5 of Limitation Act, praying this Hon'ble Court to condone the delay of 3871 days in filing the petition to bring on records of the LRs of the deceased second appellant, in the above Second Appeal.

Prayer in CMP(MD).No.9099 of 2018 :

Civil Miscellaneous Petition filed under Order 22, Rule 9(2), of Civil Procedure Code, praying this Hon'ble Court to set aside the abatement caused by the death of the 2nd Appellant in the above S.A. 45 of 2003.

Prayer in CMP(MD).No.9100 of 2018 :

Civil Miscellaneous Petition filed under Order 22, Rule 3 and Section 151 of Civil Procedure Code, praying this Hon'ble Court, to bring on Record the petitioners 2 to 4 herein as appellants 3 to 5 in this Second Appeal, as LRs of deceased 2nd Appellant.

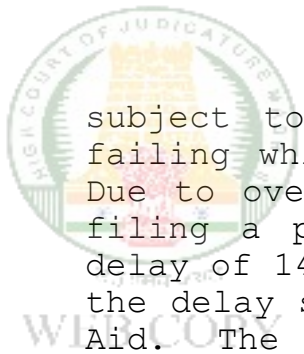
Prayer in SA No.45 of 2003 :

Second appeal filed under Section 100 of Civil Procedure Code against setting aside the judgment and Decree in A.S.No.52 of 2000 dated 06.02.2001 on the file of the Sub Court, Sankarankoil, reversing the judgment and Decree in O.S.No.394 of 1995 dated 30.08.1999 on the file of the Additional District Munsif Court, Sankarankoil.

ORDER:- Civil Miscellaneous Petition is coming upon for hearing on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr. F.X.Eugene, Advocate for the Petitioner and of Mr. R.Vasanthapriya, Advocate For Mr.S.Murugaiah, Advocate For the Respondents 6 and 7, this Court made the following order:

This petition has been filed by the petitioners/appellants praying to set aside the order of dismissal for default dated 20.09.2019 passed by this Court in C.M.P.(MD).No.9098 to 9100 of 2018 in S.A.No.45 of 2003 and to restore the same.

2. The learned counsel appearing for the petitioners submitted that C.M.P.(MD).Nos.9098 to 9100 of 2018, which have been filed for condoning the delay of 3871 days in filing a petition to set aside the abatement caused due to the death of the 2nd appellant, to set aside the abatement and to bring on record the legal heirs of the 2nd appellant ie., the petitioners 2 to 4 herein as appellants 3 to 5 in the appeal respectively, were allowed by this Court on 20.09.2019



subject to the payment of cost of Rs.1,000/- to the Legal Aid, failing which these petitions shall stand automatically dismissed. Due to oversight, the petitioners has failed to pay the cost. In filing a petition to set aside the said order, there occurred a delay of 145 days and this Court, by order dated 21.07.2020 condoned the delay subject to the payment of cost of Rs.1,000/- to the Legal Aid. The cost has been paid in time. Now, the present petition is filed for setting aside the order of dismissal for default dated 20.09.2019.

3. The learned counsel appearing for the respondents has no objection in allowing this petition.

4. Considering the above submission of the learned counsel for both sides, this petition is ordered and accordingly, C.M.P.(MD). Nos.9098 to 9100 of 2018 are restored to file.

5. List the petitions ie., C.M.P.(MD).Nos.9098 to 9100 of 2018 in S.A.No.45 of 2003 for hearing on 26.08.2020.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

TO

- 1 The Subordinate Judge, Sankarankoil.
- 2 The Additional District Munsif, Sankarankoil.

COPY TO:

THE SECTION OFFICER, (JUDICIAL SECTION)
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
(List the matter on 26.08.2020)

SDS (24.08.2020) 3P-4C