



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

Tuesday, the Twenty First day of July Two Thousand Twenty

PRESENT

The Hon`ble Mrs.Justice J.NISHA BANU

CMP (MD) No.2981 of 2020
IN
SA 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.

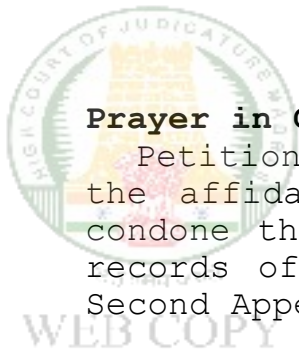
7 ASSISTANT ELECTRICAL ENGINEER,
(DISTRIPUTION) T.N.E.B.,TIRUVENGADAM.

...RESPONDENTS 6 & 7/
RESPONDENTS 6 & 7

8 VENKATESHWARI

... RESPONDENT 8/
PROPOSED RESPONDENT 8

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to condone the delay of 145 days in filing the set aside petition to set aside the order of dismissal for default and restore the C.M.P. (MD).No.9098 to 9100 of 2018 in S.A.No.45 of 2003 on file, and dispose the appeal on merits and thus render justice.



Prayer in CMP(MD) . 9098/ 2018 :

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condone the delay of 3871 days in filing the petition to bring on records of the LR's of the deceased second appellant, in the above Second Appeal.

Prayer in CMP(MD) . 9099/ 2018 :

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) . 9100/ 2018 :

TO BRING ON RECORD, the petitioners 2 to 4 herein as appellants 3 to 5 in this Second Appeal, as LR's of deceased 2nd Appellant and thus render justice.

Prayer in SA No.45 of 2003 :

Second appeal allowing the appeal and thereby setting aside the judgment and Decree in A.S.No.52 of 2000 on the file of the Sub Court, Sankarankoil, dated 06.02.2001 reversing the judgment and Decree in O.S.No.394 of 1995, on the file of the Additional District Munsif Court, Sankarankoil, dated 30.08.1999.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.F.X.EUGENE Advocate for the petitioners and of M/S.JESSI JEVA PRIYA, Advocate for M/S.S.SUBBIAH, for R1 to R5, the court made the following order:-

This petition has been filed by the petitioners seeking to condone the delay of 145 days in filing a petition to set aside the order of dismissal for default in C.M.P.(MD).Nos.9098 to 9100 of 2018 in S.A.No.45 of 2003 and to restore the said petitions.

2. The learned counsel for the petitioners submitted that C.M.P.(MD).Nos.9098 to 9100 of 2018 have been filed by the petitioners seeking to condone 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 as the appellants 3 to 5 in the appeal. The said petitions were ordered on 20.09.2019 subject to the payment of cost of Rs.1000/- within a period of one week, failing which these petitions would stand dismissed automatically. As the counsel for the petitioners mistakenly understood that the above petitions were allowed without costs, he did not pay the cost within the time stipulated and hence, these petitions were dismissed. In order to file the petition to restore the above C.M.Ps, there occurred a delay of 145 days and hence, this petition has been filed to condone the delay of 145 days. The delay is neither wilful nor wanton. Thus, he prayed to allow this petition.



3. The learned counsel appearing for the respondents 1 to 5 have no serious objection in allowing this petition.

4. Considering the above and also considering the length of delay, this Court is inclined to condone the delay subject to the payment of cost of Rs.1000/- (Rupees one thousand only) to the Legal Services Committee, attached to this Bench, within a period of two weeks from the date of receipt of copy of this order, failing which this petition shall stand dismissed automatically without any further reference to this Court.

5.This petition is accordingly ordered.

sd/-
21/07/2020

/ TRUE COPY /

/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1.THE SUBORDINATE JUDGE, SANKARANKOIL.

2.THE ADDITIONAL DISTRICT MUNSIF,
SANKARANKOIL.

COPY TO:

THE AUTHORITY OFFICER,
LEGAL SERVICES COMMITTEE,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CMP (MD) No.2981 of 2020
IN
SA No.45 of 2003
Date :21/07/2020

GCG
TK/PN/SAR.3/24.07.2020/3P/4C