



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Civil Appellate Jurisdiction)

Wednesday, the Second day of December Two Thousand and Twenty

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PRESENT

The Hon'ble Mr. Justice M. GOVINDARAJ

CMP(MD) . No.4508 of 2020

in

S.A. (MD) .No.998 of 2007

1. Shanmugavadivu (Died)
2. Utchimahali (Died)
3. Uthirakani ... Appellants 1 to 3/Petitioners 1 to 3
4. Madakkannu
5. Selvi
6. Sooriya Kani
7. Thanga Vadivu
8. Parvathi
9. Jeya
10. Chelladurai
11. Chithirai Kani
12. Saraswathi
13. Santha ... Proposed Appellants 4 to 13/Petitioners 4 to 13

Vs

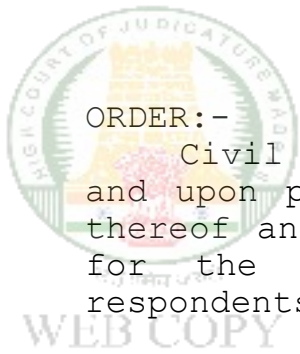
- 1 Chidambarakrishnan @ Dharma
- 2 Muthusamy
- 3 Narayananan
- 4 Kannan
- 5 Sathiyakani ... Respondents/Respondents

Prayer in CMP(MD) . No.4508 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 Court to set aside the order of dismissal for default dated 19.02.2020 made in SA(MD) No. 998 of 2007.

Prayer in SA(MD).No.998 of 2007 :

Second Appeal filed under section 100 of Civil Procedure Code, against the Judgment and Decree dated 28/03/2007 made in A.S. No.96 of 2006 on the file of the Subordinate Judge, Ambasamudram, reversing the Judgment and Decree dated 06/07/2006 made in O.S. No.275 of 2003 on the file of the Additional District Munsif, Ambasamudram.



ORDER:-

Civil Miscellaneous Petition coming up 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 Petitioners and of Mr.A.Arumugam, Advocate for the respondents 1 to 3 & 5, this Court made the following order:

This Court by an order, dated 19.02.2020, has dismissed the Second Appeal as abated against the appellants 1 and 2 and dismissed for non-prosecution against the 3rd appellant. But, the fact remains that the appellants have already filed a petition to condone the delay in filing a petition to set aside the abatement caused due to the death of the 1st appellant in SA(MD).No.998 of 2007 and to bring the LRs on record, as early as 07.02.2020. This factum was not brought to the notice of this at the time of passing the order in the Second Appeal.

2. The learned counsel appearing for the respondents objected the petitions by filing a detailed counter affidavit. According to him, the appellant was having knowledge about the dismissal for default on 19.02.2020 itself. But, they have not filed any petition in time. They have filed a petition for restoration only on 01.09.2020. Since the petition is not filed in time i.e., within 30 days, a separate application under Section 5 of the Limitation Act, 1963 need to be filed for condoning the delay in setting aside the order of dismissal for default passed on 19.02.2020.

3. On perusal of the records, I could see that even though the order was passed on 19.02.2020 it was made ready on 12.03.2020 and the petitioners filed a petition for restoration on 31.08.2020. Admittedly, all the proceedings have been delayed during the Lock down period, the Hon'ble Supreme Court ***in Suo Motu Writ Petition (Civil) No. 3 of 2020, dated 23.03.2020*** has passed an order that limitation would be extended during the Lock down period.

4. Since the petition came to be filed during the lock down period, even though the law requires filing of petition under Section 5 of the Limitation Act, in view of the order passed by the Hon'ble Supreme Court in ***Suo Motu Writ Petition (Civil) No. 3 of 2020, dated 23.03.2020***, this Court is inclined to allow this petition and accordingly, this petition is allowed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

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

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Copy to

- 1 The Section Officer, Judicial Section,
Madurai Bench of Madras High Court, Madurai.
- 2 The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai (2 COPIES)

ORDER DATED : 02/12/2020

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ORDER

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CMP(MD). No.4508 of 2020

Giving direction and etc.
as stated within.

NS (CO)

TR(23.12.2020) 3P 6C