



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (NPD) (MD) No.1691 of 2007

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|----------------------|----|----------------------|
| 1.John Joseph (Died) | .. | Petitioner/Plaintiff |
| 2.J.Jai Prakash | | |
| 3.J.Joseph Prabhakar | .. | Petitioners 2 & 3 |

[Petitioners 2 & 3 are brought on record as LR's of the deceased sole petitioner vide order dated 18.11.2021 in CMP(MD) No.1266/2021 in CRP(MD) No.1691/2007]

-vs-

1.Antony Ammal

2.Roselind (Died)
3.Pushpam (Died)

4.Reeta
5.Leela
6.Vijayakumar
7.A.Jeyamary
8.A.S.Hemavathy
9.A.S.Jegansing
10.A.S.Jeyanthiraj
11.A.M.Ditto
12.A.Amalahasan

.. Respondents 1 to 12/
Defendants 2 to 6, 8, 9 &
Proposed Defendants 10 to 15

13.Usha Catharine Mary
14.Christy Raj
15.Felix Raj
16.Josphin Sheela
17.Paul Arokyaraj

.. Respondents 13 to 17

[RR 13 to 17 are brought on record as LR's of deceased 2nd respondent vide order dated 28.11.2019 in CMP(MD) Nos.845/2018 and 8696 and 8697/2019 in CRP(MD) No.1691 of 2007]

18.Jabart
19.Rabart
20.Flaurance
21.Shanthi
22.Herbert
23.Isha

.. Respondents 18 to 23



[RR 18 to 23 are brought on record as LR's of deceased 3rd respondent vide order dated 28.11.2019 in CMP(MD) Nos.846/2018 and 8698 and 8699/2019 in CRP(MD) No.1691 of 2007]

Prayer :- Petition filed under Section 115 Civil Procedure Code against the order dated 11.07.2007 passed in I.A.No.580 of 2006 in O.S.No.212 of 1982 on the file of the Principal Subordinate Judge, Madurai and set aside the same.

For Petitioners	:	Mr.K.Perumalsamy
For RR 7 to 12	:	Ms.M.Parameswari
		for Mr.S.M.S.Johny Basha
For RR 4 to 6	:	No appearance
R1	:	Died Vide Court Order dated 24/04/2012

ORDER

This revision is filed by the plaintiff challenging the order, dated 11.07.2007, passed by the learned Principal Subordinate Judge, Madurai, made in I.A.No.580 of 2006 in O.S.No.212 of 1982.

2.The application in I.A.No.580 of 2006 has been filed to condone the delay of 248 days in filing the petition to set aside the abatement caused due to the death of the 1st defendant.

3.Pending revision, the petitioner died and his LR's were brought on record as petitioners 2 and 3. Respondents 13 to 17 were brought on record as the LR's of the deceased 2nd respondent and respondents 18 to 23 were brought on record as the LR's of the deceased 3rd respondent.

4.The deceased petitioner has given reasons for his inability to take steps to implead the legal heirs of the deceased 1st defendant on time. The deceased petitioner had contended that the suit had been dismissed on 05.02.1986. Thereafter, the petitioner had filed I.A.No.251 of 1986 to restore the suit back to the file. Since the said application has been dismissed on 17.02.1987, the petitioner has moved this Court in C.M.A.No.1002 of 1988, which was allowed on condition on 10.11.1997. The petitioner (deceased) submitted that he had complied with the condition, but however, was not able to bring up the matter to report the compliance and ultimately, the appeal was posted on 19.12.2003, and this Court taking note of the compliance of the conditional order, had allowed the Civil Miscellaneous Appeal and restored the suit back to the file. Pending all these proceedings, the 1st defendant had died and therefore, the petitioner was not in a position to implead the legal heirs. As soon as the suit had been restored, an application has



been filed and in the process, there occurred a delay of 248 days. Despite giving such cogent reasons, the learned Principal Subordinate Judge, Madurai proceeded to dismiss the impugned application and aggrieved by the same, the petitioner/plaintiff is before this Court.

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5. Heard the learned counsel for the parties and perused the records.

6. In the light of the reasons that have been set out in the affidavit filed in support of the impugned application, I am of the view that the learned Principal Subordinate Judge, Madurai, ought to have condoned the delay in setting aside the abatement. The petitioner (deceased) had taken steps as soon as the suit has been restored back to file. Therefore, the petitioners having proved their bona fides, this Civil Revision Petition is allowed, the order dated 11.07.2007 passed in I.A.No.580 of 2006 in O.S.No.212 of 1982 is set aside and the delay of 248 days in filing the application to set aside the abatement is condoned. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

abr

Note:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

The Principal Sub Judge, Madurai.

+1 CC to M/s.N.VALLINAYAGAM, Advocate (SR-39907[F]
dated 22/12/2021)

C.R.P. (NPD) (MD) No.1691 of 2007

Dated: 21.12.2021

MA (CO)

GC (28.01.2022) 3P 3C