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A.No.1336 of 2022 in
C.S.No.397 of 2005

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V.BHAVANI SUBBAROYAN, J.,

The present application is filed by Mrs.Vijaya, who is the daughter of Mrs. Rajam, sole proprietrix of 1st defendant company, to substitute her name in the place of Mrs.Rajam, deceased.

2. The learned counsel for the applicant submitted that the applicant's mother, who was the sole proprietrix of the 1st defendant firm died on 01.09.2021. In fact, the said Rajam was set exparte on 16.08.2021 and thereafter, application was filed to set aside the same with application to condone the delay and written statement. Unfortunately, the same were returned on 02.08.2021 for certain compliances and the same was represented, again the same was returned. In the meanwhile, the said Rajam died, therefore, the application and written statement could not be represented. Thereafter, a memo was filed along with the death certificate and legal heir certificate on 06.09.2021. Since the plaintiff did not take steps to implead substitution of the 1st defendant, the applicant, who is a



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proper and necessary party to decide the issue involved in the present suit,
has filed the present application and pleaded to allow the same.

3. In contrary, by way of detailed counter, the learned counsel for the 1st respondent / plaintiff vehemently opposed to allow the present application by submitting that the applicant was set exparte vide order dated 16.08.2021 in view of the fact that she has failed to file the written statement within the time granted that too despite being served with suit summons in June, 2021. Further, when the instant suit was listed for hearing, the applicant had undertaken to file application to set aside the exparte order, however, filed only a memo before the learned Master on 06.12.2021 and the same was received by the respondent on 16.12.2021 along with death and legal heirship certificate of the applicant's proprietrix. That apart, the respondent cannot file an application to implead the legal heirs of the applicant's proprietrix without the applicant initiating proceedings to set aside the exparte order. Moreover, the learned counsel pleaded to dismiss the application as per Order 22 Rule 4(4) of the Code of Civil Procedure.



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4. Heard the learned counsel on either side and perused the documents placed on record.

Admittedly, the applicant's mother, viz., Rajam was set exparte on 16.08.2021 and she was the sole proprietrix of the 1st defendant firm. Thereafter, application was filed to set aside the same with condone delay and written statement. The same were returned by the Registry on 02.08.2021 for certain compliances and the same was represented, again the same was returned. In the meanwhile, the said Rajam died on 01.09.2021. Therefore, the application and written statement could not be represented. Thereafter, a memo was filed along with the death certificate and legal heir certificate on 06.09.2021.

This Court finds some force in the submission of the learned counsel for the applicant and being satisfied with the reasons stated in the affidavit filed in support of the present application, particularly, at paragraph No.2, and with a view to render justice, this Court is inclined to allow the application.



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Accordingly, this application is allowed. The learned counsel on either side are directed to carryout the amendment in the plaint and the necessary documents shall be represented after serving amended copy of the plaint. Registry is directed to list the matter on 17.06.2022.

19.04.2022

ssd

V.BHAVANI SUBBAROYAN, J,

ssd

C.S.No.822 of 2008



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19.04.2022