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CMP.Nos.13865, 13867 & 13869 of 2022

in

SA.No.735 of 2013

KRISHNAN RAMASAMY.J.,

These petitions have been filed praying (i) to condone the delay of 3851 days in filing the petition to set aside the abatement caused due to the death of the first respondent namely viz., S.Paul, in the above second appeal, (ii) to set aside the abatement caused due to the death of the first respondent in the above second appeal (iii) to permit the petitioner/appellant to bring on record the respondents 3 to 7 herein as the legal heirs of the deceased first respondent viz., S.Paul and rank them as respondents 3 to 7 in the above second appeal, respectively.

2.Heard Mr.S.Subramanian, learned counsel appearing for the petitioner/appellant and Mr.P.Rajendran, learned counsel for the respondents 2 to 7.

3.The learned counsel for the petitioner would submit that the first respondent, Thiru S.Paul died on 27.08.2011, however, the petitioner was not aware of the death of the 1st respondent and only came to know on



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16.06.2022 through the learned counsel for the 2nd respondent and immediately, thereafter, the petitioner has filed the present petitions within 90 days from the date of knowledge about the death of the 1st respondent and there occurred delay, which is neither willful nor wanton and hence, the learned counsel would urge this Court to allow the present petitions, otherwise, the petitioner/appellant trust will be put to irreparable loss and damage.

4. By order, dated 30.08.2022, this Court ordered notice to the proposed respondents 2 to 7. The learned counsel appearing for the petitioner would submit that except R2, no other respondents filed vaklath. It is also represented that R3 died and the Court notice sent to the respondents R4, R5 and R7 returned with postal endorsement "no such addressee". The learned counsel also informed that the wife of the deceased 3rd respondent had also passed away. Since the legal heirs of the 3rd respondent have filed the petition as legal heirs of the 1st respondent, no separate petition to bring on record the the legal heirs of the 3rd respondent is required.

5. However, the learned counsel for the respondents 2 to 7 reported no objection in allowing these petitions.



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6. Considering the submissions made by the learned counsel for the petitioner/appellant and in view of the fact that the second appeal is pending for the past 10 years and also the reasons stated in the affidavits filed in support of the respective petitions and in the interest of justice, this Court feels it appropriate to allow these petitions.

7. Accordingly, these C.M.Ps. are allowed. Registry is directed to carry out necessary amendments in the cause title within a period of two weeks and list the Second Appeal for final hearing on 16.11.2022.

8. With regard to the legal heirs of 3rd respondent is concerned, both the learned counsel would submit that they would file a memo in this regard. Accordingly, if any memo is filed, necessary amendment will be carried out and if not filed, as per this order stated above, amendment will be carried out.

22.09.2022

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