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CMP.Nos.3995, 3858, 3984, 3998 and 4000 of 2022
in AS.No.631 of 2007

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S.S.SUNDAR, J.
and
P.B.BALAJI, J.

(Order of the Court was made by S.S.SUNDAR, J)

These applications are filed to condone the delay of 1292 days in filing the petition to set aside the abatement caused due to the death of the sole appellant; set aside the abatement; bring on record the petitioners herein as appellants 2 to 6 in the appeal; condone the delay of 1054 days in filing the petition to restore the appeal and restore the above appeal.

2. The petitioners' father is the plaintiff in the suit in OS.No.81 of 2005 filed for specific performance and the appeal is filed against the judgment and decree of the Trial Court dismissing the suit for specific performance. The defendants 1 to 5 are the persons, who have entered into an agreement with the plaintiff/appellant.

3. It is the case of the plaintiff that the seventh defendant in the suit is a landholder holding "Mel Varam" right. The eighth defendant is



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impleaded as a party in the suit as he created some trouble to the plaintiff as a person representing the interest of the seventh defendant.

4. The suit for specific performance is against defendants 1 to 5 and these applications are not contested by them. However, the eighth respondent, who is the eighth defendant in the suit has filed counter. In the suit for specific performance filed by the plaintiff against defendants 1 to 5, this Court cannot decide the right of the defendants 7 and 8. However, these applications are seriously opposed by the eighth respondent.

5. In the affidavit filed in support of the petitions, the petitioners have given satisfactory reasons. It is seen from records that the appeal was dismissed as abated on 05.02.2019 with liberty to file appropriate application if so advised. It is the specific case of the petitioners that their father's counsel by name Narayanan did not inform about the dismissal and hence, they could not file the application in time. It is stated that when the eighth respondent came near the suit property and proclaimed that the appeal filed by the petitioners' father was dismissed on 05.02.2019 as abated, then only the petitioners came to know about the dismissal.



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6. The factual averments in the affidavit are not seriously disputed in the counter affidavit. The fact that this Court has extended the period of limitation during Covid-19 is also to be considered. Therefore, considering the overall circumstances, this Court is of the view that the petitioners have given acceptable reasons for the delay and therefore the condone delay petition is allowed. Consequently, the order dated 05.02.2019 dismissing the appeal as abated is set aside and the appeal stands restored. The petitioners are impleaded as appellants 2 to 6 in the appeal.

7. Registry is directed to carryout necessary amendment and post the appeal on 06.06.2023

(S.S.S.R.J.,) (P.B.B.J.,)
31.03.2023

pvs



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