



WEB COPY



C.M.P.Nos.4408 and 7775 of 2019

C.M.P.Nos.4408 and 7775 of 2019

in

A.S.Sr.No.126862 of 2003

R.SUBRAMANIAN, J.

and

R.KALAIMATHI, J.

CMP.No.4408 of 2019 is filed with the following prayer:-

“To condone the delay of 2115 days in filing the petition to set aside the order of dismissal for non-prosecution dated 03.04.2013 in A.S.Sr.No.126862 of 2003.”

CMP.No.7775 of 2019 is filed with the following prayer:-

“To set aside the dismissal order dated 03.04.2013 and restore the M.P.No.1 of 2015 in A.S.Sr.No.126862 of 2003.”

2. The original proceedings viz., A.S.Sr.No.126862 of 2003 was lodged against the award of the Fast Track Court, Salem made in LAOP.No.64 of 2002 seeking enhancement of the compensation awarded for the lands acquired by the respondents for the purposes of Salem – Karur Broad Gauge line. The appeal was accompanied by an application in M.P.No.1 of 2012 seeking leave to file the appeal as an indigent person. The said application came to be dismissed for default on 17.06.2013.



C.M.P.Nos.4408 and 7775 of 2019

WEB COPY 3. In the interregnum the appellant viz., Ammasi Ammal had died even on 18.07.2006. Thus, the appeal itself is abated on the date on which it was dismissed for non-prosecution. Therefore, the order dismissing the appeal for non-prosecution is of no consequence. Subsequently, it is seen that the legal heirs of Ammasi Ammal had filed M.P.No.1 of 2014 seeking to bring on record themselves as her legal representatives and the said petition came to be allowed by the Division Bench on 15.11.2017. The amendment that was required to be carried out was also carried out.

4. Thereafter, upon insistence of the Registry, the learned counsel for the appellant has filed C.M.P.Nos.4408 and 7775 of 2019 seeking condonation of delay of 2115 days in seeking restoration of the application in M.P.No.1 of 2012 seeking leave to file appeal as indigent person and restore the said application by setting aside the order of dismissal dated 03.04.2013. These applications in our opinion are wholly unnecessary. Once the proceeding has abated, no further order is required to declare it as having abated. The abatement is automatic and once the abatement is set aside the appeal or petition stands restored automatically. There is no need



C.M.P.Nos.4408 and 7775 of 2019

for filing an application for restoration of the appeal or a petition which was dismissed for default. The order dismissing the appeal or the petition for default after it had abated is a nullity. Therefore, the question of seeking to condone the delay in seeking restoration and seeking restoration does not arise at all. Hence, these applications are dismissed as unnecessary.

5. Now that the abatement has been set aside and the legal representatives have been brought on record in M.P.No.1 of 2012 in A.S.Sr.No.126862 of 2003, the said application already stand restored. Hence, the Registry is directed to list the same along with the other connected matters next week.

(R.S.M., J.) (R.K.M., J.)
26.09.2023

dsa



WEB COPY



C.M.P.Nos.4408 and 7775 of 2019

R.SUBRAMANIAN, J.
and
R.KALAIMATHI, J.

dsa

C.M.P.Nos.4408 and 7775 of 2019
in
A.S.Sr.No.126862 of 2003

26.09.2023