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**C.M.P.Nos. 20420, 20423 & 20396 of 2021**  
**in**  
**S.A. No. 44 of 2011**  
**T.V. THAMILSELVI, J.**

These petitions are filed seeking to condone the delay of 2517 days in setting aside the abatement, to set aside the abatement caused due to the death of 2<sup>nd</sup> respondent and to bring on record the proposed respondents 3 to 6 herein as legal representatives of deceased 2<sup>nd</sup> respondent.

2. Mr.M.Narayanaswamy, learned counsel for petitioner/appellant submitted that pending appeal, 2<sup>nd</sup> respondent died on 23.01.2013 leaving behind his two wives and two sons. He would also submit that when the above matter was listed for hearing, the petitioner came to about the death 2<sup>nd</sup> respondent and after due enquiry, he gathered the particulars of his legal heirs. However, there is a delay of 2517 days arose in setting aside the abatement and the delay is neither willful nor negligent. Hence, he has filed the above petitions.

3. Mr.N.Manokaran, learned senior counsel appearing for respondents 1, 4 and 6 appeared and raised strong objections stating that

the proposed respondents 4 and 6, who are said to be wife and son of



deceased 2<sup>nd</sup> respondent and their details were given long back, but they have not taken steps to implead them and the reason for the delay was not satisfactorily explained. Hence, he prayed to dismiss the above petitions.

4. Heard both sides.

5. It is pertinent to note that though the proposed respondents 3 and 5 are not legal heirs of deceased, he has two wives and on allowing the petitions to implead the legal heirs, the status of parties cannot be decided and the suit was filed seeking for permanent injunction, against which, the present appeal is pending. So, subject to objections raised by the respondents 1, 4 and 6 and on considering the reasons assigned in the affidavit, all the petitions are allowed on condition that the petitioner shall pay a cost of Rs.2500/- (Rupees two thousand five hundred only) to the contesting respondents' counsel within a period of two weeks from the date of receipt of copy of this order. The proposed legal representative of the 2<sup>nd</sup> respondent is impleaded as respondents 3 to 6 in the above Second Appeal.

6. Issue notice to proposed respondents 3 and 5 through court returnable by 05.09.2023. Private notice is also permitted.



7. The learned counsel for appellant is directed to pay batta for the proposed respondents 3 and 5 within three days.

8. The Registry is directed to carry out the necessary amendment in the cause title and post the matter on 05.09.2023.

**04.08.2023**

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