



C.M.P. Nos.5528, 5532 and 5533 of 2024
in O.S.A. No.194 of 2018

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**M.SUNDAR,J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,**

(Order of the Court was made by K.GOVINDARAJAN THILAKAVADI, J.)

Captioned Civil Miscellaneous Petitions are filed (i) to condone delay of 408 days in filing petition to set aside the abatement caused due to the death of B.Kishtamma Naidu, (ii) to set aside the abatement caused on account of the death of B.Kishtamma Naidu and (iii) to bring on record the respondents as legal representatives of B.Kishtamma Naidu.

2. According to the petitioner, the sole respondent viz., the fifth respondent died on 04.08.2022 leaving behind the proposed respondents as his legal representatives to proceed with the present appeal. According to the petitioner, delay of 408 days in filing the above petition to set aside the abatement occurred due to the reason set out in paragraph 4 of the support affidavit which reads as follows:

'4. I further submit that the 5th respondent in the O.S.A. died on 04.08.2022 and the same was intimated to the petitioner on 31.01.2024. The petitioner states



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that they got knowledge about the death of B.Kishtamma Naidu on 31.01.2024 and immediately taken steps to bring legal representatives on record. By abundant caution the petitioner is filing application to condone delay along with a petition to set aside the abatement and to implead the legal heirs of deceased B.Kishtamma Naidu. In the interest of justice, it is just and necessary to set aside the abatement caused on account of the death of the 5th respondent in the O.S.A. and to bring the legal heirs of the deceased B.Kishtamma Naidu on record. In the meanwhile, there was a delay of 408 days occurred in filing the present petition to set aside the abatement.'

3. Learned counsel appearing for the petitioners reiterated the reason narrated in the aforesaid paragraph and would submit that the delay is neither wilful nor wanton. Therefore, these petitions are to be allowed.

4. Learned counsel for respondents has no serious objection for allowing these petitions. Accordingly, these petitions are allowed.

(M.S.J.) (K.G.T.J.)
24.04.2024

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Note: Registry is directed to carry out necessary and consequential amendments in case file within a fortnight.



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