



CMP(MD) No.2142 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Tuesday, the Fourth day of June Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice S.SOUNTHAR

C.M.P(MD) Nos.2142, 2144 and 2145 of 2024
in
S.A(MD)No.238 of 2004

R.M.POOMAYIL

... PETITIONER/ APPELLANT

Vs

1 S.VAIRATHAL (DIED)

... SOLE RESPONDENT

2 R.VASANTHI

... 2ND RESPONDENT/PROPOSED 2ND RESPONDENT
/LR OF THE DECEASED SOLE RESPONDENT

Prayer in CMP(MD).2142/2024 :

To condone the delay of 553 days in filing to set aside the abatement caused due to the death of the Sole Respondent namely S.Vairathalin the above SA(MD) No.238/2004.

Prayer in CMP(MD). 2144/ 2024 :

To set aside the abatement caused due to the death of the Sole Respondent namely S.Vairathalin the above SA(MD) No.238/2004.

Prayer in CMP(MD). 2145/ 2024 :

To bring on record the 2nd respondent as legal representative of the deceased sole respondent namely Vairathal as 2nd respondent in the SA(MD) No.238/2004.

Prayer in S.A(MD)No.238 of 2004 :

To set aside the Decree and Judgment dated 25.11.2002 passed in A.S.No.4 of 2002 by the Subordinate Judge, Devakottai modifying the Decree and Judgment

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dated 31.07.2001 passed in O.S.25/2000 on the file of the District Munsif, Devakottai, thereby decree the said suit as prayed for with cost in favour of the Plaintiff/Appellant herein.

ORDER : These Civil Miscellaneous Petitions coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.R.SURIYA NARAYANAN, Advocate for the petitioner in all CMP's and of MR.R.SUNDAR SRINIVASAN, Advocate on behalf of the Respondents in all CMP's, the court made the following order:-

The petitioner / appellant has filed applications to condone the delay of 553 days in filing the petition to set aside the abatement caused due to the death of the sole respondent and also to set aside the abatement and to bring on record the legal representatives of the deceased sole respondent.

2. The petition to condone the delay was opposed by the learned counsel appearing for the respondent on the ground that in the Execution Petition filed by the respondent, steps have been taken to bring on record the legal representatives of the deceased respondent in E.A.No.1 of 2021. Even after the receipt of the notice in the said application, the petitioner failed to take immediate steps.

3. In the affidavit filed in support of the condone delay petition, it was asserted by the petitioner that she came to know about the death of the sole respondent in the Second Appeal only after the receipt of the notice in E.A.No.1 of 2021. However neither the petitioner nor the respondent in his counter mentioned about the date of service of notice in E.A.No.1 of 2021 on the petitioner. It is a settled law that when



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there is a dispute between the substantial rights of the parties and procedural law, the former will prevail over the later. Therefore, this Court is inclined to take liberal approach while considering the petition to condone the delay and to set aside the abatement.

4. Taking into consideration the overall circumstances, all these petitions are allowed on condition that the petitioner shall make payment of Rs.1000/- (Rupees One Thousand only) to the Chief Justice Relief Fund within a period of one week from the date of receipt of a copy of this order.

sd/-
04/06/2024

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/06/2024
Sub-Assistant Registrar (C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TSG

TO

1 THE SUBORDINATE JUDGE, DEVAKOTTAI.

2 THE DISTRICT MUNSIF, DEVAKOTTAI.

COPY TO

THE SECTION OFFICER, ACCOUNTS SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.



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ORDER

IN

C.M.P(MD) Nos.2142, 2144 and 2145 of 2024

in

S.A(MD)No.238 of 2004

Date :04/06/2024

RS/GS/SAR-(07.06.2024) 4P 4C

Madurai Bench of Madras High Court is issuing
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