



CMP.Nos.21751, 21752 & 21753

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-12-2025

CORAM

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

C.M.P.Nos.21751, 21752 & 21753 of 2025

in

A.S.No.11 of 2021

M/s.Trans Asian Shipping Services (P) Ltd.,
Rep.by its Branch Manager and
Authorized Signatory Mr.Abraham Mathew
21, Dr.Radhakrishnan Salai, EVS Tower
Second Floor, Chennai 600 004.

... Petitioner in all CMP.Nos.

Vs

1.M/s.Shree Ganesh Steel Rolling Mills Ltd.,
Rep.by Its Managing Director
Mr.Ashok Sharaf
14A, Ennore High Road
Chennai 600 019.

Mr.Ashok Sharaf (Deceased)

2.M/s.P.R.Agencies
No.13, Bazzar Street, 2nd Street
Royapuram, Chennai 600 013.

3.Ruchira Saraf
Wife Of Late Ashok Sharaf
Old No.148, New No.183
Poonamallee High Road Kilpauk



CMP.Nos.21751, 21752 & 21753

Chennai 600 010.

4. Anushree Jhunjhunwala
Daughter Of Late Ashok Sharaf
Old No.148, New No.183
Poonamallee High Road Kilpauk
Chennai 600 010.

5. Raghav Kumar Saraf
Son Of Late Ashok Sharaf
Old No.148, New No.183
Poonamallee High Road Kilpauk
Chennai 600 010.

... Respondents In All CMPs.

PRAYER in CMP No.21751 of 2025:

To condone the delay of 2094 days in filing the petition to set aside the abatement caused due to the death of the deceased 2nd respondent viz., Ashok Saraf in the above A.S.No.11 of 2021.

PRAYER in CMP No.21752 of 2025:

To set aside the abatement caused due to the death of the deceased 2nd respondent Ashok Saraf in the above AS.No.11 of 2021.

PRAYER in CMP No.21753 of 2025:

To bring on record the proposed respondents herein as the legal heirs of the deceased 2nd respondent Ashok Saraf and rank them as proposed respondents in the above A.S.No.11 of 2021.



CMP.Nos.21751, 21752 & 21753

For Petitioner in
all CMP.Nos.

:M/s.Anita Thomas

For Respondents
in all CMP.Nos.

: Mr.V.S.Rishwanth for R1
Mr.S.Raghunathan for R3 to R5
R2 – Left

COMMON ORDER

Heard.

2. These are applications seeking (i) condonation of delay of 2094 days in set aside the abatement caused to the death of 2nd respondent late Mr. Ashok Saraf; (ii) setting aside abatement, and (iii) consequential impleading the L.Rs of deceased 2nd defendant. A connected memo has also been filed by the first respondent–company placing on record a Board Resolution authorising Mr.Raghav Kumar Saraf to represent the company first respondent.

3. Facts relevant for the present order: The appeal arises from O.S. No. 14018 of 2010, wherein the present appellant-a shipping line-sued (i) the 1st respondent-company represented by its Managing Director, (ii) Mr. Ashok Saraf, Managing Director of the 1st defendant, and (iii) the clearing & forwarding agent. The suit was dismissed on 28.11.2019 against the defendants. The cause title and



CMP.Nos.21751, 21752 & 21753

the decree date appear on the trial court's judgment, which records the arrayal of parties in the above form. The present Appeal A.S.No.11 of 2021, retains the same structure in the cause title.

4. During pendency of suit itself, Mr. Ashok Saraf died on 08.07.2019.

A death certificate issued by the Greater Chennai Corporation is produced. The appellant asserts that, owing to this death, the appeal stood noted as abated on 05.12.2019 vis-à-vis R-2. The petitions aver that the appellant learnt of R-2's death only upon receipt of a letter on 11.08.2025; that the appeal stood abated on 05.12.2019; and that a delay of 2094 days in moving to set aside abatement requires condonation. The appellant identifies (i) Mrs. Ruchira Saraf (wife), (ii) Ms. Anushree Jhunjhunwala (daughter), and (iii) Mr. Raghav Kumar Saraf (son) as legal representatives and prays for impleading. The petitioner has also enclosed the death certificate and has the legal heirship certificate of the proposed legal heirs.

5. A counter has been filed opposing the reliefs. Broadly, it is contended that in essence that the appeal is not maintainable since the second defendant had died in early point of time; that the arrayal of R-2 was only as Managing Director, hence not in personal capacity, so Order XXII Rule 4 CPC is inapplicable; (c) the delay is inordinate and not satisfactorily explained; and (d) at



CMP.Nos.21751, 21752 & 21753

any rate, the company (R-1) requires no “LR substitution” and can proceed through authorised representation.

6. For present purposes, three narrow questions arise:

(a) Whether, given the separate arrayal of Mr. Ashok Saraf as the second defendant/second respondent, proceedings as against him require compliance with Order XXII Rule 4 CPC upon his death.

(b) Whether the first respondent–company suffers abatement or requires “substitution,” or whether its representation can be regularised by corporate authorisation.

(c) Whether delay in moving to bring the legal representatives on record as against the second respondent should be condoned and any abatement set aside.

7. The first respondent is a non-living juristic person, represented by living juristic person. It does not “die” with the demise of its Managing Director. Its appearance before court is to be in accordance with Order XXIX CPC and the



CMP.Nos.21751, 21752 & 21753

company's internal authorisations. The Board Resolution placed on record authorises Mr. Raghav Kumar Saraf to act for and represent the company in legal proceedings; The said authorisation suffices to regularise representation in this appeal.

8. The cause title of the original suit makes it plain that Mr. Ashok Saraf was impleaded as the second defendant in addition to the company as the first defendant. The words "Managing Director of the 1st defendant" describe his office, but his impleadment is in his personal/individual capacity as a distinct party to the lis; the same cause title has been carried over in this appeal as the second respondent being the Managing Director of the first defendant company.

9. In consequence, upon the death of respondent No.2, Mr. Ashok Saraf, the provisions of Order XXII Rule 4 CPC are attracted as regards the proceedings against him, and legal representatives are required to be brought on record; failing which, there would be abatement to that extent.

10. As to the contention that the trial decree is non est because the second defendant died pending suit, the submission does not commend acceptance. The Supreme Court in *P. Jesaya by LRs v. Sub-Collector, (2004) 13 SCC 431*,
6/9



CMP.Nos.21751, 21752 & 21753

holds that where the death of a party was not disclosed and counsel continued to act, the decree is not treated as a nullity; Order XXII Rule 10-A casts a duty on the pleader to intimate the death and the court will not permit parties to take the process for a ride by suppressing that fact. This is reiterated by the Madras High Court in **Review Application No.10 of 2020. Order XXII Rule 10-A CPC** casts a duty on the pleader to inform the Court/other side, and parties cannot take the Court for a ride by later setting up abatement to undo an adverse decision; the correct course is to regularise the record by substitution where the right to sue survives, rather than to annul the decree for a procedural lapse. In appellate jurisdiction, by force of Order XXII Rules 4, 9 and 11 read with Section 107 CPC, delay can be condoned, abatement set aside, and legal representatives brought on record; impleadment at this stage is therefore competent, and the appeal can proceed inter partes with all merits kept open.

11. Accordingly, the applications in CMP.Nos.21751, 21752 and 21753 of 2025 respectively, for condonation of delay of 2094 to set aside the abatement as against respondent No.2 is allowed.

(i) The abatement caused due to the death of 2nd respondent is set aside and the legal representatives of respondent No.2, shall stand impleaded as respondents



CMP.Nos.21751, 21752 & 21753

No.2 to 5.

WEB COPY

(ii) The memo and Board Resolution filed by respondent No.1 are recorded; representation of the first respondent-company through its authorised representative, Mr. Raghav Kumar Saraf, is regularised in this appeal.

(iii) Registry shall carry out the amendment to the cause title upon filing of an amended memo of parties within one week; consequential corrections shall be effected in all court records.

(iv) List the appeal for final hearing on 21.01.2026. No order as to costs in these CMPs.

10.12.2025

dna



WEB COPY



CMP.Nos.21751, 21752 & 21753

DR. A.D. MARIA CLETE, J

dna

C.M.P.Nos.21751, 21752 & 21753 of 2025
in
A.S.No.11 of 2021

10.12.2025