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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-11-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

CMP No. 26191 of 2026 in
S.A.No.868 of 2008

1. T.Manicka Naicker (Died)
2. M.S.Neela
   W/o. S.Sankaran
3. M.Dayalan
   S/o. Late T. Manicka Naicker

..Petitioner(s)/
Proposed appellants
2 and 3

Vs

1. Mumtaj Bi (Died)
2. Amir Sahib
   S/o. Sheik Amed Sahib
3. Irfan
4. Ghouse Bi
5. Mustak
   S/o. Hussain Batcha
6. Khadar Basha
   S/o. Hussain Batcha
7. Nooruddin (Died)
8. Janma
   W/o. Nooruddin
9. Jamaluddin
   S/o. Nooruddin
10. Narloes
    D/o. Nooruddin

..Respondent(s)

11. Jeeva @ Lakshmi
    W/o. Late T.Manicka Naicker
12. Lingeshwaran
    W/o. Late T.Manicka Naicker

… Proposed
respondents 11 and 12

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Prayer: Petition filed under Section 5 of Limitation Act to condone delay of 1496 days in filing the petition to set aside the abatement caused due to the death of the Sole Appellant in the above Appeal

For Petitioner(s): Ms.A.B.Reehana Begum

For Respondent(s): Mr.K.V.Ananthakrishnan for R6
Mr.K.Selvakumar for R11 and R12

ORDER

This petition has been filed by the petitioners to condone the delay of 1496 days in filing this Petition to set aside the abatement caused due to the death of the sole appellant in the Second Appeal.

2. According to the petitioners, they are the legal heirs of the deceased-appellant. The appellant died on 04.12.2021 leaving behind the petitioners and proposed respondents 11 and 12. The petitioners were not aware of the above said pendency of the appeal and in the 1st Week of August, 2026, the counsel at Chennai called these petitioners and informed about the pendency of the appeal, thereby there is a delay of 1496 days to set aside the abatement caused due to the death of the sole appellant.

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3. The respondents, 5, 6 and 8 to 10 filed counter, denying the averments in the affidavit and according to the respondents, the petitioners have not furnished the copy of the death certificate of the deceased-appellant and also not furnished the legal heirship certificate to substantiate that the petitioners 2 and 3 and the respondents 11 and 12 are the legal heirs of the deceased -appellant. The petitioners have not mentioned in the petition the number of days delay in filing the petition. There is an inordinate delay of 4 ½ years in filing the petition and the petitioners have not satisfied the requirement under the Law to condone the delay of 4 ½ years, therefore, prayed to dismiss the petition.

4. This Court heard both sides and perused the documents placed on record.

5. In this case, the sole appellant died on 04.12.2021, however, the petitioners have filed this petition only in the month of August, 2026 with the delay of 1496 days. According to the petitioners, they were not aware about the pendency of the appeal, which was filed by the sole appellant and they came to know about the said appeal only during the 1st Week of August, 2026 and thereafter, immediately, they filed this

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petition and the petitioners also have not filed any legal heirship certificate of the deceased sole appellant. Though the respondents 5, 6 and 8 to 10 have vehemently denied the averments stated in the petition, the other legal heirs, who are arrayed as respondents 11 and 12 have not seriously objected.

6. Considering the above said reasons, in order to provide a fair chance to the parties and to proceed with the case on merits, it is appropriate to allow the present petition.

Accordingly, this petition is allowed.

04-11-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
ssd
Note: Registry is directed to carryout necessary amendment.

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P.DHANABAL, J.

ssd

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