WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-11-2026

CORAM

THE HON'BLE MR.JUSTICE S.KARTHIKEYAN

C.M.P.Nos.28471, 28474 and 28475 of 2025
in
S.A.No.1093 of 2014

1. Baby Ammal
2. Dakshinamurthy
3. Krishnamurthy
4. Ramalingam
   Thaiyalnayaki (Died)
5. Manikandan
6. Rajesh
7. Saranya

..Appellants/Petitioners
in all CMPs

Vs

Ramakrishnan

..Respondent
in all CMPs

PRAYER in CMP.No.28471 of 2025: Civil Miscellaneous Petition filed under Section 5 of Limitation Act praying to condone the delay of 904 days in filing the application to set aside abatement caused due to death of the deceased 5th appellant Thaiyalnayaki in the above Second Appeal.

https://www.mhc.tn.gov.in/judis

WEB COPY

PRAYER in CMP.No.28474 of 2025: Civil Miscellaneous Petition filed under Order XXII Rule 9(2) of CPC praying to bring on record the legal representatives of the deceased 5th appellant Thaiyalnayaki in the above Second Appeal and rank them 6th to 8th Appellant in the above Second Appeal.

PRAYER in CMP.No.28475 of 2025: Civil Miscellaneous Petition filed under Order XXII Rule 4 of CPC praying to set aside abatement caused due to the delay in filing the application to bring on record the legal representatives of the deceased 5th appellant Thaiyalnayaki in the above Second Appeal.

For Appellants: Mr.K.Mohammed Hidher Ali
for MrD.Ravichander

For Respondent: Ms.C.N.Prarthana
for Mr.R.Rajavelavan

COMMON ORDER

According to the learned counsel for the appellants/petitioners, the 5th appellant in the Second Appeal, namely Thaiyalnayaki, died on 17.12.2022 leaving behind the petitioners 5 to 7 herein. According to him, the right to sue survives on them even after the death of the appellant. The petition for bringing the legal representatives on record ought to have been filed within 90 days, i.e., on or before 17.03.2023 and the petition for setting aside the abatement ought to have been filed on or before 17.05.2023. However, due to Jaundice and other viral infections, the 4th petitioner herein was not in position to move this Court

https://www.mhc.tn.gov.in/judis

WEB COPY

immediately. Therefore, the petition for setting aside the abatement was filed with a delay of 904 days.

2. The learned counsel for the respondent submitted that the reason adduced by the appellants/petitioners for the inordinate delay of 904 days in filing the petition for setting aside the abatement is vague and is not supported by any medical records. Therefore, she strongly opposed to allow these miscellaneous petitions.

3. This Court has given its thoughtful consideration to the rival submissions put forth by either side. From the affidavit filed by the 4th petitioner herein, it is found that Thaiyalnayaki died on 17.12.2022 leaving behind the petitioners 5 to 7 herein and therefore, the right to sue survives on them. Though there is a delay of 904 days in filing the petition for setting aside the abatement, this Court is of the considered view that the delay should not defeat justice. At the same time, the costs and inconvenience caused to the respondent also has to be compensated atleast on monetary terms. Thus, this Court is inclined to allow these petitions on payment of costs of Rs.3,000/- (Rupees Three Thousand Only) payable to the respondent on or before 02.12.2026, failing which, these petitions will stand automatically dismissed without any further reference to this Court.

https://www.mhc.tn.gov.in/judis

WEB COPY

S.KARTHIKEYAN, J.

hvk

4. Post the matter on 03.12.2026 ‘for reporting compliance’.

17-11-2026

hvk

C.M.P.Nos.28471, 28474 and 28475 of 2025
in
S.A.No.1093 of 2014

https://www.mhc.tn.gov.in/judis