



CMP(MD) Nos.12645, 12646 & 12647 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.01.2026

CORAM

THE HONOURABLE MS.JUSTICE R. POORNIMA

CMP(MD) Nos. 12645, 12646 & 12647 of 2023

in

S.A.(MD)No.438 of 2005

J.Veluthai (died)

Sole appellant

J.Palraj

Petitioner/Proposed appellant

Vs.

1.Tuticorin Municipality,
Rep. By its Commissioner,
WIC Road,
Tuticorin.

1st Respondent

2. J.Grace Sornabai

3. J.Banumathy

4. J.Thangavel

5. J.Shanthi

6. J.Vijaya

7. J.Dhanapal

8. J.Jaya

Respondents 2 to 8 /

Proposed Respondents 2 to 8

Respondents 2 to 8 are all only formal parties
and notice not necessary



CMP(MD) Nos.12645, 12646 & 12647 of 2023

WEB COPY For Petitioner(s): Mr. N.shanmugaselvam

For Respondent(s): Mr.N.Anandakumar - R1

Prayer in CMP(MD) No.12645 of 2023: To condone the delay of 2303 days in filing the application to set aside the abatement caused due to the death of the sole appellant in the above second appeal.

Prayer in CMP(MD) No.12646 of 2023: To set aside abatement caused due to the death of the sole appellant in S.A.(MD).No.438 of 2005 is concerned.

Prayer in CMP(MD) No.12647 of 2023: To bring on record the petitioner and respondents 2 to 8 herein as the legal representatives of the deceased sole appellant in S.A.(MD).No.438 of 2005 and rank them as 2nd appellant and respondents 2 to 8.

COMMON ORDER

These applications in CMP(MD)Nos.12645, 12646 & 12647 of 2025 have been filed to condone the delay of 2303 days in filing the application to set aside the abatement caused on account of death of the sole appellant; to set aside the abatement caused due to the death of the sole appellant and to bring on record the 2nd appellant and respondents 2 to 8 as the legal representatives of the deceased sole appellant.

2. Originally the 1st Respondent/plaintiff- Municipality filed a suit for permanent injunction restraining the sole defendant/sole appellant



CMP(MD) Nos.12645, 12646 & 12647 of 2023

from carrying out any construction and for a mandatory injunction directing the defendant for removal of certain portions of the construction made in violation of the approved plan of the 1st respondent/plaintiff.

3. The sole appellant contested the suit by contending that there is no deviation or violation as alleged by the respondent *inter alia* among other grounds. The suit in O.S.No.445 of 1993 was decreed in favour of the 1st respondent Municipality by the Additional District Munsif Court, Tuticorin, on 13.03.1997, against which an appeal also preferred by the sole appellant in A.S.No.131 of 1997 before the subordinate Court, Tuticorin and the same was also dismissed on 15.02.2005 by confirming the decree and judgment of the learned District Munsif, Tuticorin. Aggrieved by the same, the sole defendant/appellant preferred the present second appeal before this Court. During the pendency of the appeal the sole appellant died on 06.07.2014 leaving behind the petitioner and respondents 2 to 8 as his legal heirs. The petitioner further stated that the pendency of the case was without his knowledge and therefore, there was a delay in filing the petitions. Hence, prayed to condone the delay of 2303 days in filing the application to set



CMP(MD) Nos.12645, 12646 & 12647 of 2023

aside the abatement caused due to the death of the sole appellant.

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4. The learned counsel appearing for the 1st respondent submitted that there is a huge delay in filing these petitions. There is no merit in the second appeal. The reason stated for the delay has not been properly explained by the petitioner and appears to be only an attempt to protract the proceedings. Hence, the petitions are liable to be dismissed.

5. Heard the learned counsel on either side and perused the materials available on record.

6. The suit was dismissed in the year 1997 and the appeal was filed in the year 1997 and dismissed in the year 2005 and the second appeal was filed in the year 2005. At that time the sole appellant was alive and he died only in the year 2014.

7. Though the sole appellant died in the year 2014, the petitioner being the legal heir has stated that he is not aware about the proceedings initiated by his own father and filed these petitions almost



CMP(MD) Nos.12645, 12646 & 12647 of 2023

after 6 years. Thereafter, such a plea of lack of knowledge about the pendency of the second appeal is not believable.

8. The petitioner seeking to set aside the abatement caused due to the death of sole appellant has not been satisfactorily explained and it clearly shows that after suffering dismissal of the suit and the first appeal, during pendency of the second appeal, after lapse of 6 years, the present Civil Miscellaneous Petitions have been filed only with an intention to drag on the proceedings. This Court is of the view that the applications filed to bring the legal representatives on record are devoid of merit and accordingly, the same are liable to be dismissed.

9. In view of the same, the CMP(MD) Nos.12645, 12646 & 12647 of 2023 are dismissed. No costs.

09.01.2026

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CMP(MD) Nos.12645, 12646 & 12647 of 2023

R.POORNIMA, J.

RM

**CMP(MD) Nos. 12645, 12646 & 12647 of 2023
in
S.A.(MD)No.438 of 2005**

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