

**IN THE COURT OF SUBORDINATE JUDGE,
MADURANTAKAM.**

**Present: Mr. T. GANESH, B.A., B.L.,
Subordinate Judge
Madurantakam**

**Monday, this 20th day of April, 2026
I.A.No. 8/2025
in
O.S.No. 61/2020
(CNR No. TNCG13000380-2020)**

S. Dhandapani

...Petitioner/Plaintiff

..Vs..

1. Kasthuri Ammal (Died)

2. R. Balasubramani (Died)

...Defendants 1 and 2

3. V. Rajalakshmi Ammal

4. S. Indira

5. S. Vettriselvi (Died)

6. Krishnaveni

7. Balakumar (Died)

8. Gayathiri

9. Pakkiaraj

10. Narmadha

11. Karunamoorthy

12. Karthikeyini

13. Victora Rani

14. N.J.M. Infrastructure private Ltd.,

Rep.by its Director,

N. Jayamurugan.

15. S.N.J Infrastructure Property Developers Pvt. Ltd.,

Rep.by its Director,

N. Jayamurugan.

16. Bhavani (Died) ...Respondents 3 to 16/Defendants 3 to 16

17. Meerabai ... 17th Respondent/ 17th Defendant

18. S. Ravisekar ... 18th Respondent/ 18th Defendant

19. Karpagambigai ... 19th Respondent/ 19th Defendant

20. Nandhini ... 20th Respondent/ 20th Defendant

21. Manisha Shri ... 21st Respondent/ 21st Defendant

This petition coming up for final hearing on 09.04.2026 in the presence of Mr.R.S.Renganathan, counsel for the Petitioner/Plaintiff, the respondents 3 to 6, 8 to 16 endorsed no counter and Respondents 19 to 21 were called absent and set exparte and after hearing the arguments of the petitioner and upon perusing the records, having stood over for the consideration of this court till date, this court delivered the following;

ORDER

This petition is filed by the petitioner Under Section 5 of Limitation Act to condone the delay of 1516 days in filing the petition under Order XXII Rule 9 of CPC to set aside the abatement of the suit as against the 7th defendant by petitioner/plaintiff in the above case.

2. Averments of the petitioner:

Petitioner is the plaintiff in the above suit. Pending suit the 7th defendant died on 26.05.2021 leaving behind the respondents 19 to 21 as his legal heirs at law. Death of 7th defendant is not reported to the Court by the Advocate appearing for defendants 3 to 13 and 16. Further in the above case petitioner constrained to follow the proceedings of amendments and transpose of plaintiff 2 and 3 as defendants 18 and 19 and other time consuming ancillary proceedings. So petitioner unable to add and implead the respondents 19 to 21 in the above suit as the legal heirs of deceased 7th defendant by giving them with proper ranking of party, which resulted the suit against the 7th defendant became abated and delay of 1516 days in filing the petition to set aside the abatement of the suit as against the deceased 7th defendant under Section 5 of Limitation Act.

The delay stated above in filing the petition to set aside the abatement of the suit as against the 7th defendant is neither willful nor wanton, but bonafide one to avoid time consuming multiplicity of proceedings in the above suit. So petitioner constrained to file this petition to condone the delay of 1516 days in filing the petition to set aside the abatement of the suit as against the 7th defendant together with petitions to set aside the abatement of the suit as against the 7th defendant and the petition to recognize the respondents 19 to 21 as the legal heirs of deceased 7th defendant and to add them in the suit as defendants 19 to 21 by giving suitable and proper ranking.

Unless petitioner's above petitions are allowed in the interest of justice, he will be put to great loss and hardship. By allowing the said petitions, in the interest of justice would no way cause any loss and hardship, injustice to the respondents/defendants. Hence the petitioner files this petition to condone the delay of 1516 days in filing the petition under Order XXII Rule 9 of CPC to set aside the abatement of the suit as against the 7th defendant by petitioner/plaintiff in the above case.

3. Respondents 3 to 6 and 8 to 16 endorsed no counter. In spite of service of notice, respondents 19 to 21 failed to appear and they were called absent and set ex parte.
4. No oral or documentary evidence adduced by both sides.
5. Heard both sides and perused the records.

6. Point:

“Whether this application can be allowed?”

This petition has been filed by the petitioner/plaintiff under Section 5 of the Limitation Act seeking condonation of delay of 1516 days in filing the petition to set aside the abatement of the suit as against the deceased 7th defendant.

In nut shell the petitioner contends that the 7th defendant died on 26.05.2021 leaving behind the respondents 19 to 21 as his legal heirs and that the said fact was not reported before the Court by the counsel appearing for the defendants and hence there is delay in filing the application to set aside the abatement. Hence this petition to condone the delay

It is also seen from the records that in spite of service of notice, respondents 19 to 21 failed to appear and were set ex parte. Other contesting respondents also endorsed no counter.

This Court has carefully considered the averments made in the affidavit and perused the records. It is well settled that while considering an application under Section 5 of the Limitation Act, the Court is required to adopt a pragmatic and justice-oriented approach. The length of delay by itself is not decisive; what is material is whether the explanation offered discloses sufficient cause and whether the conduct of the party shows bona fide.

In the present case, the explanation put forth by the petitioner is that the death of the 7th defendant was not brought to the notice of the Court and that due to involvement in other proceedings in the suit, he could not take timely steps to

implead the legal heirs. The abatement has occurred not on merits but due to procedural lapse. The petitioner seeks to set aside the abatement in order to proceed with the suit on merits. There is nothing on record to suggest that the delay was deliberate or actuated by mala fide intention. On the other hand, the reasons assigned, though indicating some delay in taking steps, cannot be said to be wholly unacceptable in the facts and circumstances of the case.

When substantial rights are involved, Courts ordinarily lean in favour of affording an opportunity to have the matter decided on merits, provided the explanation is not tainted with wilful negligence. Denial of such opportunity would result in the claim being partly defeated without adjudication. Further, though notice has been served, the respondents 19 to 21 have not chosen to appear and contest the application. Hence, there is no impediment in considering the request of the petitioner. Considering the overall facts and circumstances of the case, this Court is of the view that the petitioner has shown sufficient cause for the delay in filing the petition to set aside the abatement. Hence this point is decided accordingly.

8. Result:

In the result this application is allowed. No costs.

Directly typed in my personal lap-top, corrected and pronounced by me in the open court, this 20th day of April, 2026.

Subordinate Judge,
Madurantakam.

Petitioner side Evidence and Exhibits : Nil.

Respondent side Evidence and Exhibits : Nil.

Subordinate Judge,
Madurantakam.

FAIR/DRAFT ORDER
I.A No. 8/2025
in
O.S No. 61/2020
D.O.D: 20.04.2026
SUB COURT,
MADURANTAKAM