

IN THE COURT OF THE DISTRICT MUNSIF, ARNI.

PRESENT: Miss. D.V.Koperundevi,B.com.,L.L.B.,(Hons)

DISTRICT MUNSIF,

DISTRICT MUNSIF COURT, ARNI.

Saturday, the 20th day of September 2025.

I.A. No. 02/2023

in

O.S. No. 269/2008.

1.Selvakumar
2. Sakthivel
3. Chandrasekar
4.Anja
5.Kavitha

... Petitioners/Plaintiffs

/Vs/

1.Thiruvengadam
2.Maheswari
3.Sivalingam
4.Palani
5.Ealumalai
6.Deepa
7.V.Suresh
8.Sachithanantham (died)
9.K.Palani
10. K.Manidandan
11.Thenmozhi
12.Bakkiyalakshmi
13.Bharathi
14.Baskaran

...Respondents/Defendants

...Proposed parties

...Proposed legal representatives of 8th
defendant Sachithanantham

This petition came up before me for final hearing on 09.09.2025 in the presence of Thiru.D.Chandrasekaran Advocate for the Petitioners/Plaintiffs, and Thiru. S.Dhananjayan, Advocate for the Respondents/Defendants, and Proposed parties, and upon hearing both sides enquiry and perusing the material records of this petition and having stood over for consideration till this day, this court delivers the following:-

ORDER

The petitioner filed this petition under Section 5 of Limitation Act and Section 151 CPC.

I. The gist of the averments in the petition:

1. In the affidavit, the petitioner submit that the petitioner herein and the 1st plaintiff in the main suit. The petitioner filing this affidavit for himself and on behalf of the other plaintiffs.
2. The petitioner submit that pending the above case the 8th defendant namely (Sachithanantham) died on 14.05.2022 leaving behind his wife Thenmozhi-(1 his daughters Bakkiyalakshmi.(2), Bharathi (3) and his son Baskaran (4), are to be added as parties to the above suit being the legal heirs of deceased defendant (Sachithanantham) for proper adjudication.
3. The petitioner submit that it was brought to his notice knowingly on 03.07.2023 about the death of Sachithanantham, though the death of Sachithanantham was not reported by his advocate as per order 22 rule 10(A) of CPC, hence there is no dealy in filing the L.R. application for coming to the petitioner's knowledge about the death of Sachithanantham, by way of abandon caution the petitioner filing the abetment application and also section 5 of application to condone the delay of 323 days in filing abatement application and L.R application.
4. The petitioner submit that the petitioner ought to filed the L.R. application with in 90 days after the death of the 8th defendant Sachithanantham. The petitioner was not in a position to file L.R. application in time due to the reasons stated above. The L.R application and the set aside abatement application could not be filed in time. Hence the suit is abated against the 8th defendant Sachithanantham. So it becomes necessary to him to set aside the abatement caused in the above case. The petitioner failure to file those applications in time is neither wanton nor willful. If this section 5 application is not allowed the petitioner will be put to

serious loss and hardship. Balance of convenience is in his favor. It is therefore just and necessary that the order of abatement of the suit may be set aside under the circumstances.

II. The gist of the averments in the counter filed by R2 to R5:

1. In the above petition, while the above petitioners' suit was pending, the 8th respondent, Sachithanandam, died on 14.05.2022. Therefore, a petition was filed seeking to add his heirs, respondents 11 to 14, to the above suit. The petition filed to condone the delay of 323 days, under Section 5 of the Limitation Act, is not legally or justly maintainable.
2. The petitioners themselves have to prove the facts mentioned in paragraph 3 of the above affidavit.
3. In the above petition, no documents regarding the death of the deceased 8th respondent Satchidanandam or the heirship certificate of his heirs have been attached with the petition. Therefore, the petitioners themselves have to prove the details related to the legal heirs of the deceased Satchidanandam with proper documents.
4. The petitioners have not stated any reason in the above petition for the delay in seeking to add the above legal heirs to the above case. The petitioners must prove the delay for each day in filing the said petition.
5. Therefore, the above petition is not maintainable.
6. Therefore, the petitioners most humbly pray to the Hon'ble Court to dismiss the above petition along with the costs incurred by this respondent.

III. Points:

Whether the petition under Section 5 of Limitation Act and Section 151 of CPC to be allowed or not?

IV. Points for Consideration:

Heard on both sides. Records have been perused.

1. The petitioners, who are the plaintiffs in the main suit, have filed the present

petition stating that the 8th defendant, namely Sachithanantham, died on 14.05.2022 leaving behind his wife Thenmozhi, his daughters Bakkiyalakshmi and Bharathi, and his son Baskaran as his legal heirs, and that they are necessary parties to be impleaded in the suit for effective adjudication. The petitioners admit that the application to bring the legal representatives on record could not be filed within the prescribed period of 90 days and consequently the suit stood abated against the deceased 8th defendant. It is their contention that they came to know of the death of the 8th defendant only on 03.07.2023, since the said fact was not reported by the counsel appearing for him as mandated under Order 22 Rule 10-A CPC. They state that immediately after knowledge, the present application to set aside the abatement and to condone the delay of 323 days has been filed along with an application to implead the legal heirs. According to them, the delay is neither wanton nor willful and if not condoned, it would result in irreparable loss and hardship, whereas the balance of convenience lies in favor of allowing the petition.

2. The contesting respondents 2 to 5 have filed their counter opposing the petition. Their main objection is that the petition is not legally maintainable since the delay of 323 days has not been properly explained. It is contended that the petitioners have not produced any document to prove the death of the 8th defendant or any legal heirship certificate to show that the proposed parties are in fact the legal representatives of the deceased. They further submit that the petitioners are bound to explain the delay for each day and that vague statements about lack of knowledge cannot constitute sufficient cause. Hence, according to the respondents, the petition deserves to be dismissed with costs.
3. On careful consideration, it is clear that the legal position under Order 22 CPC is that when a defendant dies and the right to sue survives, the legal representatives must be brought on record within 90 days; otherwise the suit abates against the deceased. However, such abatement can be set aside under Order 22 Rule 9 CPC

if sufficient cause is shown for the delay, and the provisions of Section 5 of the Limitation Act apply for condonation of such delay. It is equally well settled that the words “sufficient cause” should receive a liberal interpretation in order to advance substantial justice, though the burden is on the petitioners to show bona fide reasons for the delay.

4. In the present case, the death of the 8th defendant on 14.05.2022 is not specifically denied by the respondents, though they dispute lack of documentary proof. The explanation offered by the petitioners is that they came to know of the death only on 03.07.2023 since the advocate for the deceased did not discharge his duty under Order 22 Rule 10-A CPC to report the death to the Court. This explanation, though not backed by documents of date of knowledge, appears plausible and cannot be termed mala fide. The delay is certainly long, but it is occasioned by the lack of communication of the fact of death and not by deliberate inaction. Once the petitioners claim to have gained knowledge, they have promptly moved the present applications.
5. The objection of the respondents regarding non-production of death certificate and heirship certificate is a curable defect, as such documents can always be directed to be filed before impleadment. The absence of such documents at the time of filing cannot render the petition not maintainable, especially when the death itself is admitted. Thusby, considering all the material records the petition filed under section 5 of Limitation Act, the delay of 323 days is condoned and petition deserves to be allowed.

v. Result: As a result, the petition is allowed and no cost.

Dictated to Steno Typist, and computerized by her directly, corrected and pronounced by me in the open Court, on the 20th day of September 2025.

**District Munsif
Arni**

List of documents & witnesses: N I L

**District Munsif
Arni**

