

In the Court of District Munsif, Lalgudi.
Present: Shri. M. Kadarkaraiselvam, B.A., LL.M.,
Principal District Munsif,
Lalgudi.
Saturday the 21st day of June 2025
IA.No.6/2023 in OS.No.55/2016

1. Sri Mariyamman Radhotsava 9th day Car
Festival Panjaprahara Utsava Vishwa Brahmana
Podhu Jana Samaradhanai Thaneer Pandhal
Dharmam Rep. By its present Trustee Rajagopal
 2. RajagopalPetitioners/ Plaintiffs
- Vs
1. Marudhamuthu (died)
 2. M. Manikandan
 3. DhanalakshmiRespondents/Defendants/Supplemental defendant

Mr. L.Rengarajan – For Petitioner
Mr. V.Ramanujam – For respondents

Upon hearing the counsel this court made the following.....

ORDER

Petition filed Under Order 22 Rule 4 of CPC and r/w Section 151 of CPC.

1) The learned counsel of the petitioner submit that the petitioner filed this petition to implead the legal representative of 1st defendant namely A.Marudhamuthu who was died on 14.08.2020. Further he submit that son of the deceased 1st defendant was already on record as a 2nd defendant and his daughter has to be impleaded as 3rd defendant. Hence, prayed for allow this petition.

2) On the other hand the respondent vehemently opposed this petition. The petitioner having the knowledge of the demise of 1st defendant in the year 2020 itself, in view of the connected suit OS.No.58/2005 is pending before the Additional District Munsif Court, Lalgudi. In order to drag the proceedings the petitioner intentionally filed the present petition after the lapse of period prescribed by the Law. Hence, this petition required to be dismissed.

Point for consideration is whether the petition is allowed or not?

3) It is not in dispute that the 1st defendant was died on 14.08.2020 and one of the LRs of the 1st defendant namely Mani was already on record as a 2nd defendant. The daughter of the 1st defendant has to be impleaded as 3rd defendant in this case. The petitioner has not adduced any reason when death of the 1st defendant came to his knowledge. But, on the other hand the respondent stated that the petitioner having knowledge about the demise of the 1st defendant in the year 2020. But to prove this said facts no documents produced on the side of respondent. Further it appears from the records the respondent filed a memo before this court on 16.02.2022 stating that D1 was died on 14.08.2020. It is duty cast upon the 2nd defendant to inform the court factum of the death of the 1st defendant at the earliest. But, after the lapse 1 year 6 months he filed a memo before this court. Hence, the objection raised by the respondent is not sustainable.

4) In **OM PRAKASH GUPTA @ LALLOOWA (NOW DECEASED) AND ORS VS SATHISH CHANDRA (NOW DECEASED) 2025 INSC 183** in which The Hon'ble Supreme court has recently dealt with the provision Under Order 22 Rule 4 of CPC as follows:-

ANALYSIS AND REASONS

"9. The principles to guide courts while considering applications for setting aside abatement and application for condonation of delay in filing the former application are laid down by this Court in *Perumon Bhagvathy Devaswom v. Bhargavi Amma*³⁰. An instructive passage from such decision reads as follows:

"13. The principles applicable in considering applications for setting aside abatement may thus be summarised as follows:

(i) The words 'sufficient cause for not making the application within the period of limitation' should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words 'sufficient cause' in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant.

(ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.

(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.

(iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to

lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in refiling the appeal after rectification of defects.

(v) Want of 'diligence' or 'inaction' can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal."

(emphasis supplied in original)

The aforesaid passage is followed by other instructive passages too on special factors which have a bearing on what constitutes "sufficient cause", with reference to delay in applications for setting aside abatement and bringing the legal representatives on record. To the extent relevant for decisions on these two appeals, the same are extracted hereunder:

"15. The first is whether the appeal is pending in a court where regular and periodical dates of hearing are fixed. There is a significant difference between an appeal pending in a subordinate court and an appeal pending in a High Court. In lower courts, dates of hearing are periodically fixed and a party or his counsel is expected to appear on those dates and keep track of the case. The process is known as 'adjournment of hearing'. ...

16. In contrast, when an appeal is pending in a High Court, dates of hearing are not fixed periodically. Once the appeal is admitted, it virtually goes into storage and is listed before the Court only when it is ripe for hearing or when some application seeking an

interim direction is filed. It is common for appeals pending in High Courts not to be listed at all for several years. (In some courts where there is a huge pendency, the non-hearing period may be as much as ten years or even more.) When the appeal is admitted by the High Court, the counsel inform the parties that they will get in touch as and when the case is listed for hearing. There is nothing the appellant is required to do during the period between admission of the appeal and listing of the appeal for arguments (except filing paper books or depositing the charges for preparation of paper books wherever necessary). The High Courts are overloaded with appeals and the litigant is in no way responsible for non-listing for several years. There is no need for the appellant to keep track whether the respondent is dead or alive by periodical enquiries during the long period between admission and listing for hearing. When an appeal is so kept pending in suspended animation for a large number of years in the High Court without any date being fixed for hearing, there is no likelihood of the appellant becoming aware of the death of the respondent, unless both lived in the immediate vicinity or were related or the court issues a notice to him informing the death of the respondent.

17. The second circumstance is whether the counsel for the deceased respondent or the legal representative of the deceased respondent notified the court about the death and whether the court gave notice of such death to the appellant. Rule 10-A of Order 22 casts a duty on the counsel for the respondent to inform the court about the death of such respondent whenever he comes to know about it. When the death is reported and recorded in the order-sheet/proceedings and the appellant is notified, the appellant has knowledge of the death and there is a duty on the part of the appellant to take steps to bring the legal representative of the deceased on record, in place of the deceased. The need for diligence commences from the date of such knowledge. If the

appellant pleads ignorance even after the court notifies him about the death of the respondent that may be an indication of negligence or want of diligence.

18. The third circumstance is whether there is any material to contradict the claim of the appellant, if he categorically states that he was unaware of the death of the respondent. In the absence of any material, the court would accept his claim that he was not aware of the death.

19. Thus it can safely be concluded that if the following three conditions exist, the courts will usually condone the delay, and set aside the abatement (even though the period of delay is considerable and a valuable right might

have accrued to the opposite party—LRs of the deceased—on account of the abatement):

- (i) The respondent had died during the period when the appeal had been pending without any hearing dates being fixed;
- (ii) Neither the counsel for the deceased respondent nor the legal representatives of the deceased respondent had reported the death of the respondent to the court and the court has not given notice of such death to the appellant;
- (iii) The appellant avers that he was unaware of the death of the respondent and there is no material to doubt or contradict his claim. (emphasis supplied)

14. Order XXII of the Code of Civil Procedure³¹ is titled DEATH, MARRIAGE AND INSOLVENCY OF PARTIES. Rule 4 thereof lays down the procedure in case of death of one of several defendants or of sole defendant. It is clear on perusal of such rule that it does not expressly provide who between the parties to a civil suit is to present an application for substitution.

15. In *Union of India v. Ram Charan*³², this Court held: “10. It is not necessary to consider whether the High Court applied its

earlier Full Bench decision correctly or not when we are to decide the main question urged in this appeal and that being the first contention. Rules 3 and 4 of Order 22 CPC lay down respectively the procedure to be followed in case of death of one of several plaintiffs when the right to sue does not survive to the surviving plaintiffs alone or that of the sole plaintiff when the right to sue survives or of the death of one several defendants or of sole defendant in similar circumstances. The procedure requires an application for the making of the legal representatives of the deceased plaintiff or defendant a party to the suit. It does not say who is to present the application. Ordinarily it would be the plaintiff as by the abatement of the suit the defendant stand to gain. However, an application is necessary to be made for the purpose. If no such application is made within the time allowed by law, the suit abates so far as the deceased plaintiff is concerned or as against the deceased defendant. The effect of such an abatement on the suit of the surviving plaintiffs or the suit against the surviving defendants depends on other considerations as held by this Court in *State of Punjab v. Nathu Ram* [AIR 1962 SCR 89] and *Jhandha Singh v. Gurmukh Singh* [CA No. 344 of 1956 decided on April 10, 1962]. Anyway, that question does not arise in this case as the sole respondent had died.”

(emphasis supplied)"

5) In view of the above decision it is made clear that while considering the application filed Under Order 22 Rule 4 of CPC, the trial courts adopt the liberable approach. Further, in this case LRs of the 1st defendant was already on record as a 2nd defendant, therefore, the question of abatement does not arise in this case. On consider the above ratio and facts and circumstances of case this court is inclined to allow this petition.

In the result, this petition is allowed.

This order dictated by me to the typist typed by her, corrected and pronounced by me in the open court this 21st day of June 2025.

District Munsif,
Lalgudi.

Petitioner side witness and evidence - Nil

Respondent side witness and evidence - Nil

District Munsif,
Lalgudi.