



WEB COPY



A.No.1926 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-06-2026

CORAM

THE HON'BLE DR.JUSTICE A.D.MARIA CLETE

A No. 1926 of 2026

in

O.P. No. 966 of 2016

S.Balasubramanian (Died)
S/o.P.A.Sundaram
No.59, First Link Road,
Raghava Reddy Road,
Jaffarkhanpet,
Chennai 600 083.

1.Usha Balasubramanian,
W/o.S.Balasubramanian,
No.59, First Link Road,
Raghava Reddy Road,
Jaffarkhanpet,
Chennai 600 083.

2.Sangeetha Balasubramanian,
W/o.Balasubramanina Kolumam Anantharaman,
No.A-45, Casa Grande Aldea,
Bharathiyar Nagar Main Road,
Thuraipakkam,
Chennai – 600 097.

..Applicant(s)

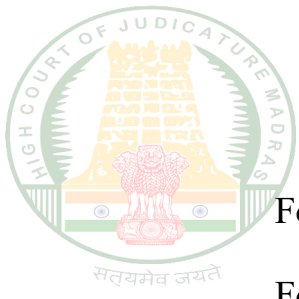
Vs

NII

..Respondent(s)

PRAYER: To permit the applicants to set aside the order dated 19.12.2023 dismissing the original petition for default, restore the original petition and thus render justice.

1/7



A.No.1926 of 2026

For Applicant(s): M/s.K.M.Vijayan Associates.

For Respondent(s): Nil

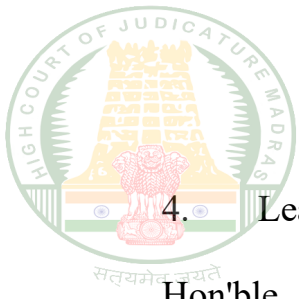
WEB COPY

ORDER

The present application has been filed quoting Order IX Rule 7 CPC seeking to set aside the order dated 19.12.2023 by which the Original Petition was dismissed for default and to restore the same to file.

2. The records reveal that the Original Petition was filed by one S. Balasubramanian seeking grant of Letters of Administration with the Will annexed. During the pendency of the proceedings, the sole petitioner died on 21.10.2018. Thereafter no application was filed either to bring on record the persons claiming under the deceased petitioner or to continue the proceedings in the manner known to law. Consequently, in the absence of any representation and due to continuous non-prosecution, the Original Petition came to be dismissed for default on 19.12.2023.

3. The present application has been filed on 17.03.2026 by the wife and daughter of the deceased petitioner seeking restoration of the Original Petition.



A.No.1926 of 2026

4. Learned counsel appearing for the applicants relied upon the decision of the

Hon'ble Supreme Court in **Vatsala Srinivasan v. Shyamala Raghunathan,**

[(2016) 13 SCC 253] decided on 11.02.2016. In the said case, the Hon'ble

Supreme Court held that the death of an executor during the pendency of

testamentary proceedings would not result in abatement of the proceedings and that

the beneficiaries or persons interested under the Will could continue the

proceedings by seeking Letters of Administration with the Will annexed. The

Hon'ble Supreme Court observed that the essence of probate proceedings and

proceedings for grant of Letters of Administration is the adjudication regarding the

genuineness and validity of the Will and, therefore, the proceedings need not come

to an end merely because of the death of the executor.

5. However, the said decision is clearly distinguishable on facts. In *Vatsala*

Srinivasan, the issue before the Hon'ble Supreme Court was whether the

testamentary proceedings abated on account of the death of the executor during the

pendency of the proceedings. The Court was not concerned with a situation where

the original proceeding had already been dismissed for default after prolonged non-

prosecution and where restoration was sought after a considerable lapse of time.

The ratio laid down therein cannot be construed to mean that a proceeding



dismissed for default can be restored automatically without complying with the statutory requirements governing restoration and limitation. The judgment only recognizes the right of eligible persons to continue the testamentary proceedings; it does not dispense with the procedural requirements prescribed under law.

6. At the outset, this Court finds that the present application has been filed under Order IX Rule 7 CPC, which provision applies to setting aside an order placing a party ex parte and permitting participation in the proceedings before the suit is disposed of. The said provision has no application to a case where the entire proceeding itself has been dismissed for default. Once a proceeding is dismissed for default, the appropriate remedy is to seek restoration under Order IX Rule 9 CPC, subject to Article 122 of Limitation Act 1963. Therefore, the present application appears to have been filed under an incorrect provision of law.

7. Further, the Original Petition stood dismissed on 19.12.2023, whereas the present application has been presented only on 17.03.2026, i.e., after the expiry of the prescribed period of limitation. Admittedly, no application has been filed seeking condonation of delay explaining the delay in filing the restoration petition. In the absence of a petition seeking condonation of delay, the restoration application itself cannot be effectively entertained.



A.No.1926 of 2026

8. It is also pertinent to note that the sole petitioner died on 21.10.2018. Even after the death of the petitioner, no substitution application has been filed, instead application in A. No. 1927 of 2026 has been filed to bring on record the legal heirs of the deceased petitioner without condonation of delay and set abatement petition.

9. Thus, the following defects are apparent on the face of the record:

1. The application has been filed under Order IX Rule 7 CPC, though the proper provision for restoration of a proceeding dismissed for default is Order IX Rule 9 CPC.
2. The application has been filed beyond the period of limitation and no petition seeking condonation of delay has been filed.

10. In such circumstances, this Court is of the view that before the restoration request can be considered on merits, the applicants must cure the above defects and place the proceedings in proper form.

11. Accordingly, the applicants are directed to file:

- (i) an application under the proper provision, namely Order IX Rule 9 CPC, seeking restoration of the Original Petition;



A.No.1926 of 2026

(ii) an application for condonation of delay explaining the delay in seeking restoration; and

WEB COPY

(iii) such other consequential applications as may be required under law.

12. Post the matter on 03.07.2026 for compliance.

19-06-2026

AY



WEB COPY



A.No.1926 of 2026

DR.A.D.MARIA CLETE, J.

AY

**A No. 1926 of 2026
in
O.P. No. 966 of 2016**

19-06-2026