

*C.M.P.(MD)No.16103 of 2025
in S.A(MD)No.53 of 2016*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.02.2026

Pronounced on : 26.02.2026

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

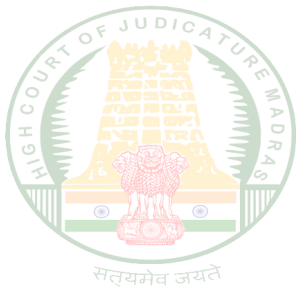
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in
S.A(MD)No.53 of 2016

- 1.P.Mahalakshmi (died)
- 2.Veeralakshmi
- 3.Sathiyabama
- 4.Navaneethakrishnan
- 5.Venkattammal
- 6.Ramakrishnammal
- 7.Kanagaraj
- 8.Venkatachalapathi

: Petitioners

Vs.

- 1.K.Kondusamy (died)
- 2.J.Rajalakshmi
- 3.N.Renganayaki
- 4.K.Avudayammal



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5.K.Anusiya Devi

6.Sooriyanarayanan

7.Veerapandan

: Respondents

PRAYER in C.M.P(MD)No.16103 of 2025: Civil Miscellaneous Petition filed under Section 5 of Limitation Act, to condone the delay of 1146 days in filing the petition to set aside the abatement caused due to the death of the sole respondent.

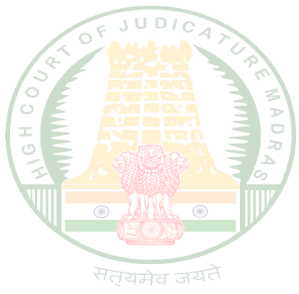
PRAYER in S.A (MD)No.53 of 2016 : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.32 of 2014 on the file of the Sub Court, Sivakasi, dated 16.07.2015 reversing the judgment and decree in O.S.No.147 of 2007 on the file of the District Munsif Court, Sattur, dated 22.08.2014.

For Petitioners : Mr.A.Sivaji,

For Respondents : Mr.R.Lakshmanan, for R2 to R5, R7.

ORDER

The above application has been filed invoking Section 5 of Limitation Act, to condone the delay of 1146 days in filing the petition to set aside the abatement caused due to the death of the sole respondent.

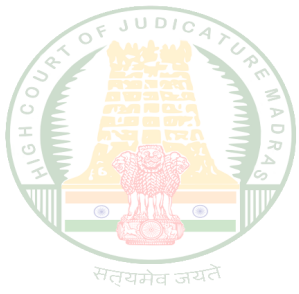


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2. The reason canvassed in the delay condonation petition is that the first respondent died on 21.05.2021, during the pendency of the second appeal, which was informed to his counsel on 30.01.2023; that thereafter, particulars of legal representatives of the first respondent through memo was furnished on 21.02.2023 by the learned counsel for the first respondent; that the said copy of the memo was received by the Junior Counsel, who, without informing the counsel on record, left the office in the year 2023 itself; that when the appeal was taken up for final hearing on 12.09.2025, his counsel came to know about the filing of the memo by the first respondent's counsel and hence, there occurred a delay of 1146 days in taking the steps for the deceased first respondent; that the delay is neither willful nor wanton, but due to the above said *bona fide reasons* and that no prejudice would be caused to the other side, if the delay is condoned.

3. The seventh respondent for himself and on behalf of the respondents 2 to 5 filed counter affidavit, disputing the petitioners' averments and further stated that the mother of the petitioners 2 to 8 Mrs.P.Mahalakshmi, filed the suit for declaration and injunction in O.S.No.2 of 2001 and the same

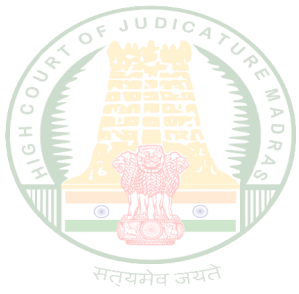


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was dismissed on 18.04.2022; that the said Mahalakshmi, never filed any appeal and as such, it has become final, that the said Mahalakshmi had no right at all to file the present second appeal and that the said factum has been suppressed purposely to cheat the Court; that the said Mahalakshmi has never filed any counter claim in the suit in O.S.No.147 of 2007 filed by the present respondent; that the petitioners have filed the present petition with huge delay of 1146 days in setting aside the abatement; that in the copy of the petition given to the respondent, it is only stated as 187 days as delayed days; that each and every day of delay is to be properly explained and that therefore, the petition is liable to be dismissed.

4. At the outset, it is pertinent to mention that the seventh respondent has filed counter affidavit as if, it is a petition to condone the delay in filing the application for setting aside the abatement caused due to the death of the sole appellant namely Mahalakshmi. It is evident from the records that the petitioners have already filed the applications in C.M.P(MD)Nos.1300 to 1302 of 2023, to condone the delay of 189 days in filing the petition to set aside the abatement caused due to the death of the sole appellant; to set aside



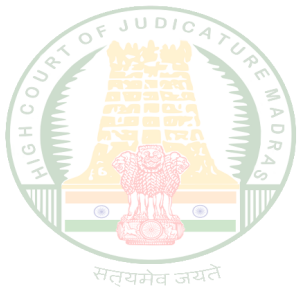
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the abatement caused due to the death of the sole appellant and to implead the petitioners therein as legal representatives of the deceased appellant Mahalakshmi and the said petitions came to be allowed, vide order, dated 08.02.2023.

5. As already pointed out, the present application and connected applications came to be filed for taking steps for the deceased sole respondent Kondusamy.

6. The learned counsel appearing for the respondents 2 to 5 and 7 would submit that the said Mahalakshmi has earlier filed a suit in O.S.No.2 of 2001, claiming the reliefs of declaration and injunction and the said suit was dismissed on 18.04.2022; that the said Mahalakshmi has never filed any appeal, challenging the said judgment and decree and as such, it has attained finality and that therefore, the said Mahalakshmi has no right to file the present appeal.



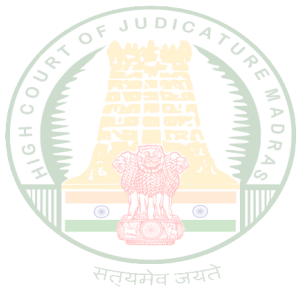
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7.The learned counsel would further submit that the seventh respondent has filed the suit for permanent injunction in O.S.No.147 of 2007 and the same was dismissed, vide judgment and decree, dated 22.08.2014; that he preferred an appeal in A.S.No.32 of 2014 and the same was allowed in his father's favour, vide judgment, dated 16.07.2015 by the Sub Court Sivakasi and challenging the judgment and decree of the first appellate Court, the said Mahalakshmi has filed the present second appeal and that the said Mahalakshmi has never filed any counter claim in the suit in O.S.No.147 of 2007 and as such, she has no right to file the second appeal. The above contentions cannot be gone into in the present applications and the same are matters to be considered and decided in the main appeal.

8.According to the petitioners, they came to know about the death of the sole respondent only when the second appeal was taken up for final disposal and immediately thereafter, they have filed the present applications.

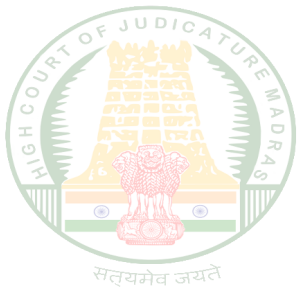
9.No doubt, the delay is inordinate. However, it is pertinent to note that there exists a clear distinction between an application seeking



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condonation of delay in filing an appeal or revision and an application seeking condonation of delay in filing a petition to set aside the abatement and to implead the legal representatives of a deceased party. In the former, the Court is concerned with the diligence of the litigant in pursuing the statutory remedy within the prescribed period of limitation. In the latter, the delay occurs on account of the death of a party during the pendency of proceedings and the consequential procedural requirement to bring on record the legal representatives within the time stipulated under law. The abatement of proceedings is a technical consequence of non-substitution within time and not a decision on the merits of the case. Therefore, while considering an application to set aside abatement, the Courts are expected to adopt a liberal and justice-oriented approach, as refusal to condone the delay would result in denial of an opportunity to prosecute or defend the proceedings on merits and may lead to miscarriage of justice. Hence, the approach required in considering such applications cannot be equated with that adopted while dealing with delay in filing substantive proceedings such as appeals or revisions.



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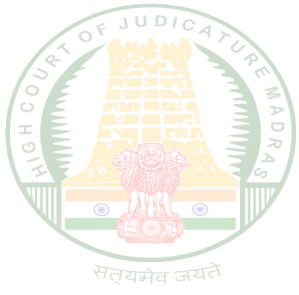
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10. Considering the facts and circumstances of the case, the reasons assigned by the petitioners and taking note of the objections raised by the respondents, this Court is inclined to condone the delay, subject to conditions. Accordingly, this petition is allowed on condition that the petitioners pay a cost of Rs.3,000/- (Rupees Three Thousand only) to respondents 2 to 5 and 7 on or before 11.03.2026, failing which, this petition shall stand dismissed automatically without further reference to this Court.

11. Post the matter on 12.03.2026 for reporting compliance.

26.02.2026

NCC : Yes /No
Index : Yes / No
Internet : Yes / No
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K.MURALI SHANKAR,J.

das

To

- 1.The Sub Court, Sivakasi.
- 2.The District Munsif Court, Sattur.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery order made in
C.M.P.(MD)No.16103 of 2025
in
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Dated:26.02.2026