
(1995) 08 MAD CK 0074

In the Madras High Court

Case No : C.M.P. No"s. 7974 to 7979 of 1993 and Appeal No. 966 of 1991

Union of India (UOI) and Another

APPELLANT

Vs

K. Abborvam (Deceased) and Others

RESPONDENT

Date of Decision : 08-08-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4

Citation : (1995) 2 CTC 329

Hon'ble Judges : Srinivasan, J;AR. Lakshmanan, J

Bench : Division Bench

Advocate : P. Krishnamoorthy, Government Pleader, for the Appellant;

Final Decision : Dismissed

Judgement

Srinivasan, J.—These petitions have been filed for condonation of delay of 851 days in seeking to set aside the abatement caused by the death of the first respondent in the appeal and setting aside the abatement and bringing the legal representatives of the deceased first respondent on record. The first respondent died on 24.5.1990, but the appeal was presented only on 11.6.1990 against the first respondent as if he was alive. The appeal presented against the dead man is not valid and it has to be dismissed on that ground. Hence, there is no question of setting aside the abatement and bringing the legal representatives on record.

2. In such a case, the procedure to be followed by the appellant has been prescribed by a Full Bench of this Court in Alusumilli Gopala Kristnayya and Anr. v. Alivi Lakshmana Rao, AIR 1925 Mad 1210. The remedy of the appellant is to seek amendment of the cause title of the appeal by showing the names of the legal representatives of the deceased respondent and also applying for condonation of delay in filing the appeal. Even When these applications were filed there was a delay of 851 days. No doubt, in the affidavit filed in support of the applications it is stated that the petitioners were not aware of the death of the respondent. That could have been so before the return of the notice issued by the Court in the appeal. But, the appellants cannot plead ignorance of the death

of the respondent after the notice issued by this Court in the first appeal returned unserved and a notification was published on the notice board that the respondent was dead and steps should be taken to bring the legal representatives on record. But the applications were filed only on 19.2.1993. There is no explanation for the delay after the return of the notice and the notification of the registry thereof. Hence, there is no justification for condoning the delay in filing these petitions.

3. Learned Counsel for the appellants prays for time to file application for amendment of cause title and for condonation of delay in filing the appeal. Even if such petitions are filed, the position will be worse. The delay after 19.2.1993 will have to be added while calculating the delay in filing the appeal. It is as if the appellants file the appeal only today when the application for amendment of cause title is being filed and ordered. Consequently, the delay will be more than four years and there is no justification for condoning such a long delay. At any rate, there is no warrant for condoning the delay after 19.2.1993. The appellant ought to have adopted proper procedure in filing the petitions before this Court. By filing these petitions which are not maintainable, the appellants cannot take advantage of their own wrong and seek condonation of delay. Hence, these applications deserve to be dismissed and they are accordingly dismissed.

C.M.P. Nos. 7977 to 7979 of 1993 :-

These petitions are filed for condonation of delay of 777 days in seeking to set aside the abatement caused on the death of the second respondent, to set aside the abatement and to bring the legal representatives on record of the deceased second respondent. The second respondent died on 7.8.1990, that is soon after the presentation of the appeal. When the notice issued to the second respondent returned with an endorsement that he was dead and the office notified the same on the notice board for the purpose of bringing the legal representatives on record, the appellant ought to have taken steps immediately. There is no explanation in the affidavit as to why steps were not taken. These petitions were filed only on 19.2.1993. We do not find any justification to condone the inordinate delay of 777 days.

2. We find that the Judgment of the Lower Court was rendered on 22.12.1993. The appeal arises out of the land acquisition proceedings. We do not think it proper in this Case to drag the legal representatives of the deceased respondent to this Court after such a long time after the passing of the award.

3. In the circumstances, the petitions are dismissed.