

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2015

CORAM

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
The Hon'ble MR.JUSTICE T.S.SIVAGNANAM

O.S.A.No.109 of 2015
and
M.P.Nos.2 and 3 of 2015
in O.S.A. No.SR.104206 of 2011

Y.Doraisami .. Appellant

-vs-

1.P.Saroja Devi @ P.Hemalatha
2.Y.Kamalamma
3.B.Subbarathnamma
4.K.Lalitha
5.V.Krishnaveni
6.R.Padmavathi .. Respondents
(Respondents 2 to 6 are given up)

Appeal filed under Order XXXVI Rule 9 of O.S.Rules read with Clause 15 of Letters Patent against the order dated 01.10.2010 in Application No.5297 of 2010 in C.S.No.400 of 2004 on the file of Original Side of this Court.

Application praying this Court to direct the 1st respondent/1st Defendant deposit the advance amount of 25 Lakhs collected from the alleged leasee M/s.National bhawan for Letting out the schedule A mentioned property to the accompanying Judge's Summon before this Court pending disposal of the above suit.

For Appellant : Mr.P.K.Sivasubramaniam

For Respondents : Mr.S.Sathyannarayanan

* * * * *

J U D G M E N T

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

The appeal is preferred against the impugned order dated 01.10.2010 passing an interim direction against the appellant to deposit a sum of Rs.25,00,000/- (Rupees twenty five lakhs only) before the Court with the remaining issue to be decided at the stage

of trial. This order is predicated on a plea of the amount collected for letting out the property in schedule 'A'.

2.The appellant took no legal remedy against that order nor did he comply with the same. The respondents were, thus, compelled to file proceedings for initiation of contempt. It is only after about one year that the appellant chose to file an application for modification, which is stated to be still pending. The appellant has also simultaneously filed thereafter an appeal against the same order.

3.Thus, the delay in the present case in filing the appeal is to the extent of 391 days, i.e. more than a year. The re-filing delay thereafter is of 1113 days, i.e., about three years.

4.On hearing the learned counsel for parties, we are not satisfied over the inordinate delay, especially keeping in mind the fact that the plea of not preferring the appeal on account of pendency of an application for modification of the order cannot be accepted for the simple reason that the modification application itself has been filed after more than a year. It is not a case where the modification application has been filed and the delay in disposal of the same has caused prejudice to the party and therefore, that period is sought to be excluded for purposes of preferring the appeal. The appellant chose in a way to accept the order for about a year and what triggered off the application for modification would only be the initiation of contempt proceedings. There is no explanation for this hiatus period between the impugned order being passed and the application for modification being filed.

5.We are, thus, not inclined to condone the delay in preferring the present appeal against the impugned order, which is of a period more than a year. We may note that a pedantic approach of easily condoning the delay, even in cases of Government authorities, has been commented now adversely in *Post Master General vs. Living Media India Limited* and another, (2012) 3 SCC 563, much less a private contesting party.

6.In the absence of sufficient cause to condone the delay, the miscellaneous petitions are dismissed. Consequently, the appeal is also dismissed as barred by time. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

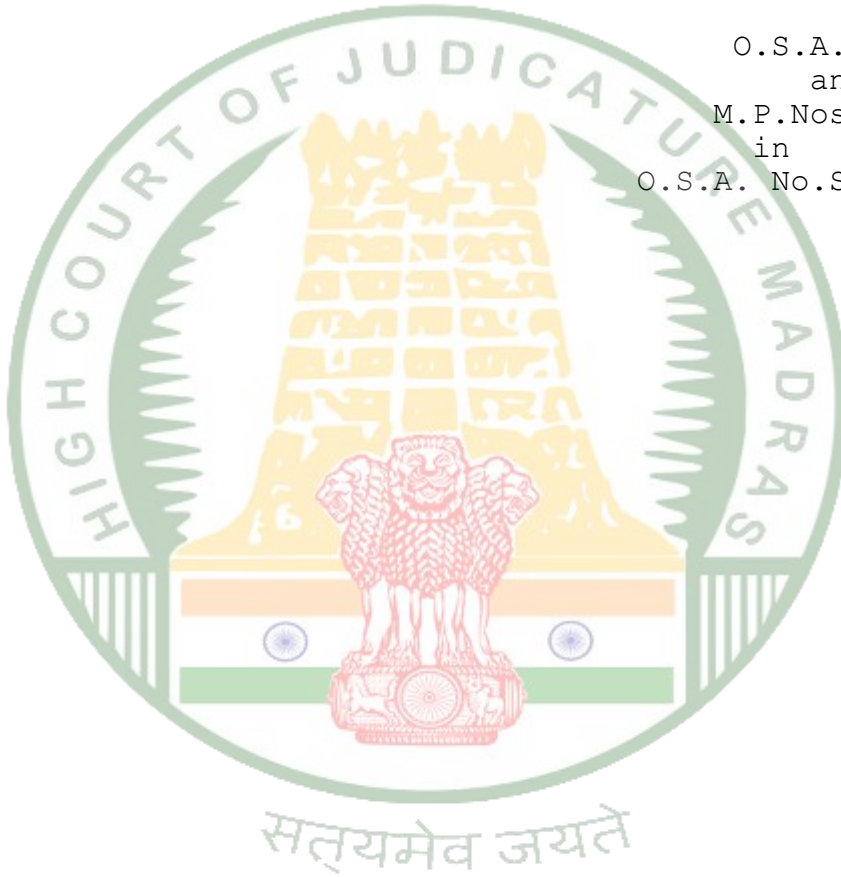
The Sub-Assistant Registrar,
Original Side, Madras High Court,
Chennai.

+1 cc to M/s.P.K.Sivasubramanian, Advocate,SR.31224

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