

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE R.MAHADEVAN

O.S.A.Nos.147 and 148 of 2016

N.S.Ziaudeen .. Appellant/Applicant in both OSAs.

-vs-

1.A.Sirajudeen
2.S.Baskar .. Respondents/Respondents in OSA.147/2016

1.P.Rathinam
2.S.Sathia Chandran
3.A.Sirajudeen
4.H.Balamurugan .. Respondents in OSA.148/2016

Appeals filed under Order XXXVI Rule 9 of the O.S. Rules read with Clause 15 of the Letters Patent against the Order and Decretal order dated 11.03.2016 passed in Application Nos.529 and 539 of 2016 in C.S.No.254 and 255 of 2013 on the file of original side of this Court.

For Appellant : Mr.Sriram
in both OSA's for M/s.A.S.Kailasam and Asso.

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J U D G M E N T

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

The appeals are directed against the impugned order of the learned Single Judge to condone the delay of 787 days in filing the applications to restore the suits dismissed for non-prosecution on 11.10.2013.

2.Though not directly relevant for the matter in issue, we may note that one suit was filed by an advocate in person seeking damages from two other advocates of the Court alleging that the first defendant in the suit had procured tenancy rights claiming to be his junior, which had drawn him into a complaint by the landlord and that the second defendant lawyer had filed certain proceedings in Court on behalf of the first defendant and had filed memo of appearance on

behalf of the appellant. There is no relevant documentation in this behalf and the suit was filed practically seven years after the alleged cause of action had arisen in 2006, suit being filed in 2013. But then, that would be aspects to be determined on merits.

3.The same advocate has also filed another suit against four advocates seeking damages alleging that the first two defendants were engaged by him in 2001 for certain matters, but failed to attend the matter properly and thus, he sought the return of the bundles whereafter he engaged third and fourth defendants by handing over the case bundle and vakalat. Since he was not satisfied even with the services rendered by them, he sought return of the case bundle from them also in December, 2006, but there was no response and he issued a legal notice on 10.07.2010 when he was informed that the writ petition was already dismissed. It appears that the restoration effort was also not successful. It is not necessary to go into any further details, but the suit for damages was filed in the year 2013.

4.The appellant engaged a counsel who is appearing in the matter and the suits were dismissed for non-prosecution. The learned Single Judge has taken note of the fact that even the plea of the name of the counsel being written wrongly in the cause list is not correct because the name has been written as described in the plaint. We are surprised to note that the excuse given is that a litigant should not suffer for the negligence of a counsel when the appellant is an advocate himself. No cause much less sufficient cause has been shown for seeking condonation of such an inordinate long period of delay and thus, the learned Single Judge rightly rejected the applications.

4.We, thus, do not find any merit in the appeals.

5.Writ appeals are dismissed. No costs.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

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

+2 cc's to Mr.A.S.Kailasam & Asso.,sr.38448, 38449.

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O.S.A.Nos.147 and 148
of 2016