



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Wednesday, the Seventh day of December Two Thousand Sixteen

PRESENT

The Hon`ble Mr.Justice M.DURAISWAMY

CMP(MD) No.11737 of 2016

IN

SA(MD) No.SR34885 of 2010

1 THE STATE OF TAMIL NADU,
REP. BY DISTRICT COLLECTOR, KANYAKUMARI DISTRICT, NAGERCOIL.

2 THE DISTRICT REVENUE OFFICER,
KANYAKUMARI DT. NAGERCOIL

3 THE REVENUE DIVISIONAL OFFICER
PADMANABHAPURAM, KANYAKUMARI DISTRICT.

4 THE TAHSILDAR,
VILAVANCODE VILLAGE, KUZHITHURAI,
VILAVANCODE TALUK., KANYAKUMARI DISTRICT.

... PETITIONERS/APPELLANTS

Vs

1 MERRY JENNIE,
2 PIUS MORAES (DIED)
S/O.MANUVEL MORAES.
3 ANITHA PIUS,

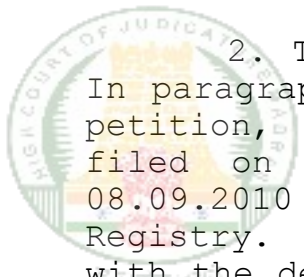
... RESPONDENTS/RESPONDENTS

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to Condone the delay of 2097 days in representing the above Second Appeal in S.A.S.R(MD) No.34885 of 2010 and thus render justice.

PRAYER IN SA(MD) No.SR34885 of 2010: Second Appeal against the judgment and decree dated:05.01.2007 passed by the Sub Court, Kuzhithurai in A.S.No.93 of 2002 reversing the judgment and decree passed in O.S.No.359 of 1993 dated:17.09.2002 on the file of II Additional District Munsif Court, Kuzhithurai.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.M.Murugan, Government Advocate for the petitioner the court made the following order:-

Heard the learned Government Advocate appearing for the
petitioners :
<https://hcservices.ecourts.gov.in/hcservices/>



2. There is a delay of 2094 days in representing the papers. In paragraph Nos.4 and 5 of the affidavit filed in support of this petition, the petitioners have stated that the second appeal was filed on 24.08.2010 and the Registry returned the papers on 08.09.2010 for complying with the defects pointed out by the Registry. Subsequently, the papers were represented on 11.02.2011 with the delay of 146 days. Thereafter also, the Registry returned the papers pointing out some defects to be complied with. In paragraph No.5, the petitioners have stated that due to the General Assembly Election of the year 2011, the staffs were engaged with the election works and therefore, the papers could not be represented in time. Now after a delay of 2094 days, the petitioners have represented the papers stating the above reasons.

3. It is pertinent to note that the appeal in A.S.No.93 of 2002 on the file of the Subordinate Court, Kuzhithurai was disposed of by the lower Appellate Court on 05.01.2007. Now almost nearly 10 years later, the petitioners are challenging the judgment and decree passed in A.S.No.93 of 2002. Since the petitioners have not explained the reasons in a proper manner, the same cannot be condoned. Unless the parties seeking condonation of delay, have not shown sufficient cause for the delay, the delay cannot be condoned. The principles laid down by the Honourable Apex Court in H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another reported in (2015)1 Supreme Court Cases 680 clearly apply to the facts and circumstances of the present case. In paragraph Nos.24 and 25, the Honourable Apex Court has held as follows:

"24. When we apply those principles of Bhattacharjee case (reported in (2013)12 SCC 649) to the case on hand, it has to be stated that the failure of the respondents in not showing due diligence in filing of the appeals and enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bona fides as displayed on the part of the respondents. Further, when the respondents have not come forward with proper details as regards the date when the papers were returned for refiling, the non-furnishing of satisfactory reasons for not refiling of papers in time and the failure to pay the court fee at the time of filing of appeal papers on 06.09.2007, the reasons which prevented the respondents from not paying the court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously construed with the filing of the appeals cumulatively considered, disclose that there was total lack of bona fides in its approach. It also requires to be stated that in the case on hand, not refiling the appeal papers within the time prescribed and by allowing the delay to the extend of nearly 1727 days, definitely calls for a stringent scrutiny and cannot be accepted as having been explained without proper reasons. As has been laid down by this Court, courts are required to weigh the scale of balance of justice in respect of both the parties and the same principle cannot be given a go-by under the



guise of liberal approach even if it pertains to refiling. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the court in the matter of condonation of delay. The respondents had filed the suit for specific performance and when the trial court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered.

25. We, therefore, find total lack of bona fides in its approach and the impugned order of the High Court in having condoned the delay in filing as well as refiling, of 9 days and 1727 days respectively, in a casual manner without giving any reason, much less acceptable reasons, cannot therefore be sustained. The appeals are allowed and the impugned order is set aside. Direction to admit the appeals of the respondents in RFAs Nos.268-88 of 2012 and 319 of 2012 is also set aside and shall stand dismissed. No costs."

4. In these circumstances, the petition filed by the petitioners seeking condonation of inordinate delay of 2094 days in representing the appeal cannot be allowed. Accordingly, the petition is devoid of merits and the same is dismissed. Consequently, S.A. (MD)No.SR34885 of 2010 is also rejected.

sd/-

07/12/2016

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE SUBORDINATE JUDGE, KUZHITHURAI

2 THE II ADDITIONAL DISTRICT, MUNSIF, KUZHITHURAI

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ORDER

IN

CMP(MD) No.11737 of 2016

IN

SA(MD) No.SR34885 of 2010

Date :07/12/2016