



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

Wednesday, the Fourteenth day of December Two Thousand Sixteen
PRESENT

The Hon`ble Mr.Justice M.DURAI SWAMY
CMP(MD) No.11933 of 2016

IN

SA(MD) No.SR41541 of 2008

WEB COPY

K.MUNISAMY

... PETITIONER/APPELLANT

Vs

MARIMUTHUPILLAI (DIED)

1 M.KARUNAKARAN

2 S.VIJAYALAKSHMI

3 M.DURGA

... RESPONDENTS/RESPONDENTS

(CAUSE TITLE ACCEPTED VIDE ORDER

DATED 22.03.2016 MADE IN

MP(MD)No.1/08 in SA(MD)No.SR41541

OF 2008 VT RMDJ)

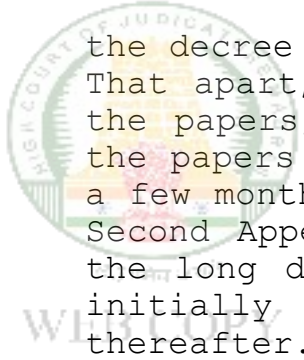
Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to Condone the delay of 2370 days in filing the above second appeal against the judgment and decree dated 12.10.2001 passed in A.S.No.39 of 2000 on the file of the Subordinate Judge, Palani and thus render justice.

Prayer in S.A.(MD)NO.SR.41541 of 2008:-Memorandum of Grounds of Second Appeal against the Judgment and decree dated 12.10.2001 passed by the Subordinate Judge, Palani in A.S.No.39 of 2000 confirming the judgment and decree dated 18.08.2000 passed by the District Munsif cum Judicial Magistrate, Kodaikanal in O.S.No. 156 OF 1996.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S. G.R. SWAMINATHAN, Advocate for the petitioner and the court made the following order:-

Heard the learned Counsel appearing for the petitioner.

2. There is a delay of 2370 days in filing the Second Appeal. In paragraph No.4 of the affidavit filed in support of this petition, the petitioner has stated that the first appeal filed by him was dismissed on 12.10.2001 and an application for getting the certified copies of the judgment and decree was made on 22.03.2005. Further he has stated that he handed over the certified copies of

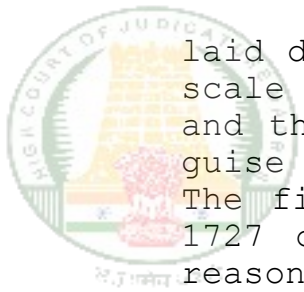


the decree and judgment to his counsel for filing the Second Appeal. That apart, the petitioner has also stated that after getting back the papers, he returned to Kodaikanal and the entire bag in which the papers were kept was misplaced by him and the bag was retrieved a few months later. Thereupon, he rushed to Madurai for filing the Second Appeal. Further the petitioner has stated that in view of the long delay, the Counsel at Madurai was not accepted the brief initially and ultimately the Second Appeal was filed four months thereafter. Hence, there is a delay of 2370 days in filing the Second Appeal.

3. When the Second Appeal was dismissed as early as on 12.10.2001, the petitioner has filed the present Second Appeal after a lapse of nearly 8 years. The Second Appeal was filed before this Court in the year 2008 and the present application seeking for condonation of delay in filing the Second Appeal has been numbered only now ie., in the year 2016. The petitioner cannot keep quiet for years together for filing the Second Appeal and further he cannot take his own time for filing the Second Appeal. When the petitioner was not diligent in prosecuting the matter in a proper manner, the inordinate delay of 2370 days cannot be condoned.

4. It is a settled position that the parties seeking for condonation of delay should give sufficient cause for the delay and if he fails to give sufficient reasons 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."

5. Since the petitioner has not given sufficient reason for the inordinate delay of 2370 days, the delay cannot be condoned. Accordingly, the petition is devoid of merits and the same is dismissed. Consequently, S.A.(MD)No.SR41541 of 2008 is also rejected.

sd/-
14/12/2016

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

TO

- 1 THE SUBORDINATE JUDGE, PALANI.
- 2 THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE, KODAIKANAL.

ORDER
IN
CMP(MD) No.11933 of 2016
IN
SA(MD) No.SR41541 of 2008
Date :14/12/2016