

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **04.12.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

C.M.P.No.9626 of 2017 and

SA.No.SR34023 of 2017

D.Panneer @ Pannerselvam ... Petitioner/Appellant

...VS..

Balaraman ... Respondent/Respondent

Petition filed under Order XLI Rule 3-A r/w Order XLII Rule 1 of Civil Procedure Code to condone the delay of 1030 days in preferring the S.A.Sr.No.34023 of 2017, before this Court against the Judgment and decree passed by the Subordinate Judge, Poonamallee in A.S.No.95 of 2011 dated 17.12.2012.

For Appellant : Mr.M.R.Senthilkumar

For Respondent : Ms.C.Harini

ORDER

This Miscellaneous Petition is filed to condone the delay of 1030 days in preferring the Second Appeal, against the Judgment and Decree in A.S.No.95 of

2011, dated 17.12.2012.

2. The suit was filed by the Plaintiff in O.S.No.813 of 2004, on the file of the learned District Munsif, Poonamalle and a decree was passed on 30.09.2011 and confirmed in the above said appeal in A.S.No.95 of 2011.

3. In paragraph 5 of the affidavit filed in support of this petition, it is stated that the petitioner is a old man and he is not in a position to file an appeal by spending money before this Court, against the Judgment and Decree in A.S.No.95 of 2011 dated 17.12.2012. Other than the said reason, the petitioner has not stated any other reason for inordinate delay of 1030 days in filing the Second Appeal.

4. The petition was resisted by the respondent, contending that the delay mentioned is not at all correct and there is actually a delay of 1394 days in filing the Second Appeal and prayed for dismissal of the same.

5. The only question that has to be decided is that whether the delay of 1030 days in filing the Second Appeal can be condoned or not. It would be relevant to go into the particulars with respect of the dates and events, leading to the filing of the Second Appeal.

6. On 29.07.2004, the respondent herein had filed a suit in O.S.No.813 of 2004, on the file of the District Munsif Court, Poonamallee for partition. On 30.09.2011, a preliminary decree was passed in favour of the Plaintiff/respondent against the said Judgment and decree passed in O.S.No.813 of 2004. On 17.12.2012, the petitioner/appellant herein preferred A.S.No.95 of 2011 before the Subordinate Court, Poonamallee. In the meanwhile, on 10.03.2013, the Plaintiff had filed I.A.No.1063 of 2013, for passing of final decree. On 26.03.2013, the petitioner herein had received the certified copies of A.S.No.95 of 2011. On 05.12.2013, the petitioner herein also filed his counter in I.A.No.1063 of 2013. On 14.06.2014, the Advocate Commissioner was appointed to inspect the suit property and divide the same. As per the preliminary decree, Advocate Commissioner has also filed a report on 08.08.2014 and objections were filed to the same by the petitioner herein on 18.08.2014. The petitioner herein filed I.A.No.1341 of 2014 in I.A.No.1063 of 2013 to remit back the warrant to the Advocate Commissioner on 15.09.2014. After contest, the said I.A was dismissed on 27.01.2015. Aggrieved by the same, the petitioner herein preferred C.R.P.No.2764 of 2015 before this Court on 06.07.2015 and the said C.R.P was dismissed on 10.08.2015. In the meanwhile, the final decree was passed by the District Munsif in I.A.No.1063 of 2013 in O.S.No.813 of 2004, based on the report of the Advocate Commissioner. Thereafter, on 07.03.2017, E.P.No.21 of 2017, was filed by the respondent for taking possession and notice

was duly sent to the petitioner on 18.03.2017. On 17.04.2017, the petitioner also entered appearance in the said E.P.No.21 of 2017. After that the petitioner has filed the Second Appeal before this Court on 20.04.2017. Even so far as number of days of delay is concerned, there is delay of 1394 days in filing the above appeal.

7. No doubt, there should be a liberal and justice oriented view, while dealing with the application filed for condonation of delay. However, it can be done when there are sufficient cause to condone the same. The above dates and the details would make it crystal clear that lack of bonafide is imputable to the petitioner. As contended by the learned counsel for the respondent there is an inordinate delay of 1394 days, which would attract the Doctrine of prejudice and hence it should be viewed strictly. Except stating that he is above 70 years, the petitioner has not come up with any genuine reason which would be just and sufficient for the Court to condone the delay. The petitioner seems to have been aware of all the proceedings one after the other and he has been participating in every proceedings by contesting the same by filing the objections wherever required. The conduct, behaviour and attitude of the petitioner relating to his inaction or negligence are relevant factors to be considered while deciding this delay petition. The affidavit filed is bereft of any particulars and the averments are absolutely bald. The petitioner was also closely following further proceeding

and was contesting the same at every level. He had been adopting wait and watch attitude and has come up with the Second Appeal at the last minute and trying to evoke sympathy. The conduct of the petitioner would cause serious prejudice to the respondent in the event of allowing the petition.

8. The entire gamut of facts would go to show that the petitioner had been callous in his attitude and the delay seems to be willful. Though, the petition for condonation of delay should be drafted with a concern, the petitioner has drafted the same in a negligent manner. The petitioner who had been closely following the procedure step by step at all stages had deliberately delayed in filing the Second Appeal and knocked this Court at the belated stage. The petitioner had taken the delay petition as a non serious matter and the same cannot be easily condoned. The delay on the part of the petitioner, if condoned would cause a serious prejudice to the other side. As the final decree itself is passed and is about to take the delivery of the property, the petitioner has filed the appeal with a delay to harass the respondent. From the attitude of the petitioner, it is seen that he had been negligent in approaching the Court, within the prescribed time. Admittedly, he had knowledge of the proceeding at every stage and he had been prosecuting at every level. The appeal has been filed almost after four years, without disclosing any just and sufficient cause. When the delay petition is not substantiated by valid reasons and explanations,

PUSHPA SATHYANARAYANA, J

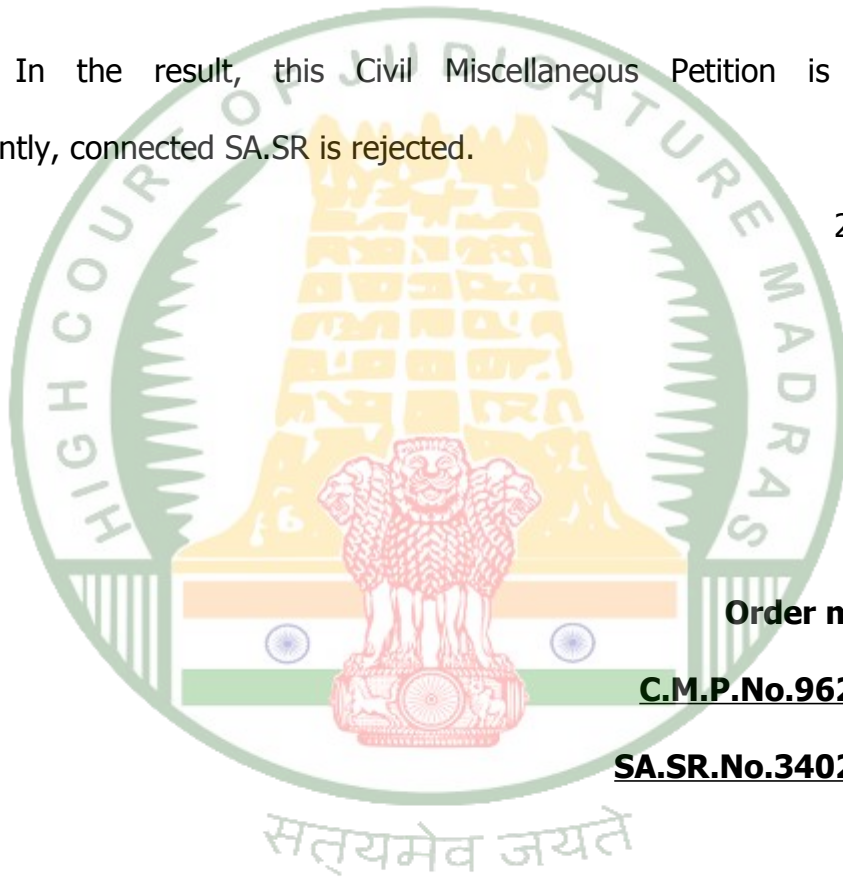
arr

the same cannot be condoned.

9. In the result, this Civil Miscellaneous Petition is dismissed.
Consequently, connected SA.SR is rejected.

28.11.2017

arr

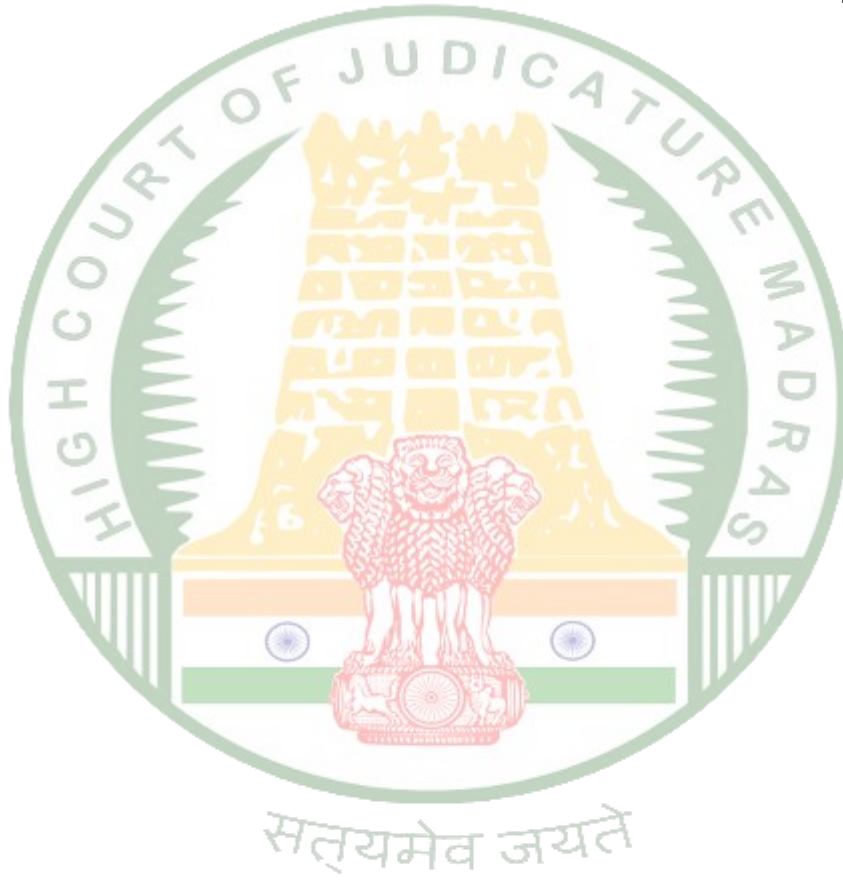


Order made in

C.M.P.No.9626 of 2017
and
SA.SR.No.34023 of 2017

WEB COPY

28.11.2017



WEB COPY