

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2017

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CMP.No.18422 of 2016

and

SA.No.SR40622 of 2012

Kasi

..Petitioner

Vs.

Jayaraman

..Respondent

PRAYER:

The Civil Miscellaneous Petition is filed under Order IV Rule 9(4) of Appellate Side Rules to condone the delay of 1586 days in representation in SA.SR.No.40622 of 2012 against the Judgment and Decree passed by the learned Sub Judge, Perambalur in AS.No.179 of 2008 dated 29.10.2010.

For Petitioner : Mr.P.Ganesan

For respondent : Mr.T.Gandhi

ORDER:

The petitioner has filed the Second appeal in SA.SR.No.40622 of 2012 against the Judgment and Decree passed by the learned Sub Judge, Perambalur in AS.No.179 of 2008 dated 29.10.2010 along with the condone delay petition.

2. According to the petitioner, the respondent filed a suit in O.S.No.709 of 1996 on the file of the District Munsif, Perambalur for permanent injunction, which was decreed. Against the same, the petitioner filed an appeal in AS.No.179 of 2008, which was dismissed. Then, the petitioner filed the Second appeal on 25.04.2012. On 27.04.2012, the Registry returned the same for certain compliance, which was represented on 11.10.2013. Thereafter, the petitioner could not contact the counsel due to illness. Only after contacting the counsel, the petitioner applied for Judgment and Decree, deposition and exhibits before trial court. In the mean time, bundle was misplaced and after it was traced out, the second appeal was represented with this condone delay application. Hence, the delay is neither wilful nor wanton.

2. The learned counsel for the respondent would submit that the petitioner has not furnished any particulars in the affidavit.

Therefore, there is no sufficient reason for condoning the inordinate delay of 1586 days in re-presenting the Second appeal. Further, both the courts have concurrently held in favour of the respondent / plaintiff and it is nearly 21 years after filing the said suit. Hence, the condone delay petition filed by the petitioner is liable to be set aside.

3. By considering the submissions made by the learned counsel for the parties and materials perused, the petitioner has not stated sufficient reasons in the affidavit for the inordinate delay in re-presenting the Second appeal. On perusal of the affidavit, it is seen that the petitioner has not furnished sufficient particulars for the inordinate delay.

4. At this juncture, it is useful to refer the decision of the Hon'ble Supreme Court in ***H. DOHIL CONSTRUCTIONS COMPANY PRIVATE LIMITED Vs. NAHAR EXPORTS LIMITED AND ANOTHER***, reported in ***(2015) 1 SCC 680***, wherein it is held as follows:

“ 24. *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."

5. In the light of the decision of the Hon'ble Supreme Court and since the petitioner has not furnished the particulars for the inordinate delay, this Court is not inclined to condone the inordinate delay and the contention of the petitioner is liable to be

rejected.

6. The Civil Miscellaneous Petition is dismissed.
Consequently, the connected Second appeal is rejected at the SR
stage itself. No costs.

04.08.2017

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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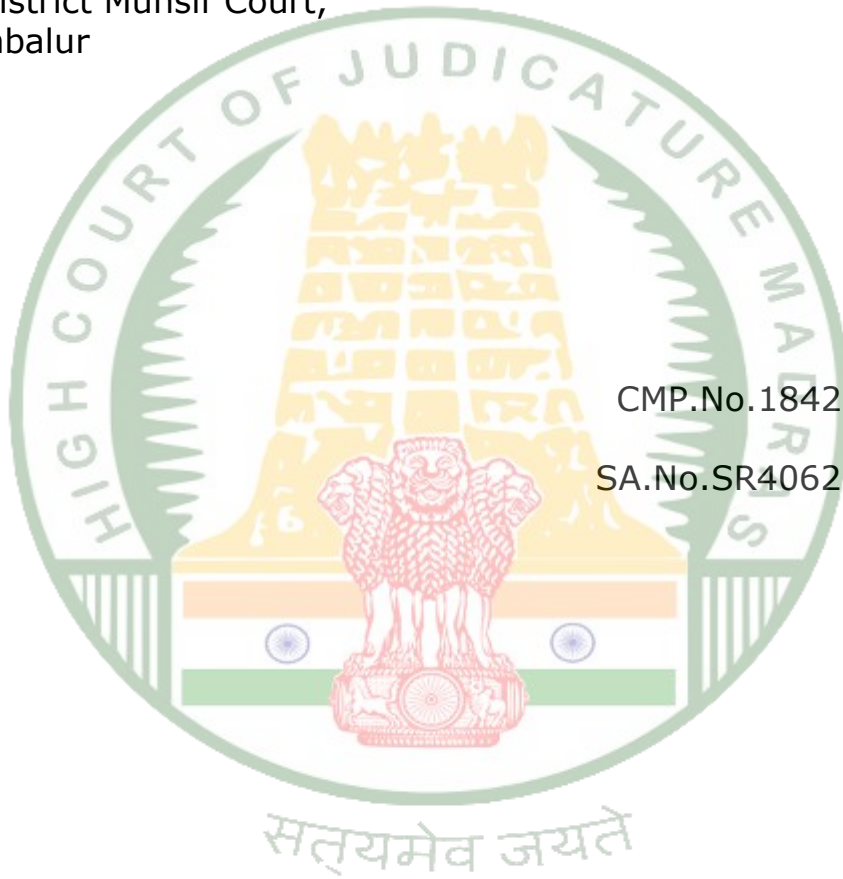
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D.KRISHNAKUMAR.J,

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To

- 1) The Sub Court,
Perambalur
- 2) The District Munsif Court,
Perambalur



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