

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2017

CORAM

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

CMP.No.4400 of 2016
and
SA.No.SR16365 of 2016

S.Murugesan

..Petitioner

Vs.

1. Chinnaraj

2. Santhanamurthy

..Respondents

PRAYER:

The Civil Miscellaneous Petition is filed under Section 41 R3 (A) R/W XLII R1 of the Civil Procedure Code to condone the delay of 820 days in filing the Second appeal in SA.No.SR16365 of 2016 against the Judgment and Decree passed by the learned Principal Subordinate Judge, Krishnagiri in AS.No.30 of 2012 dated 28.03.2013.

For Petitioner : Mr.S.Sathish Rajan

For respondents : Mr.S.Kanniah

ORDER:

The petitioner has filed the Second appeal in SA.No.SR16365 of 2016 against the Judgment and Decree passed by the learned Principal Subordinate Judge, Krishnagiri in AS.No.30 of 2012 dated 28.03.2013 along with the condone delay petition.

2. According to the petitioner, the petitioner has filed a suit in O.S.No.150 of 2008 before the District Munsif Court, Krishnagiri against the respondents for declaration and permanent injunction. The said suit was dismissed. The petitioner has preferred an appeal in AS.No.30 of 2012 before the Principal Sub Court, Krishnagiri. The said appeal was also dismissed by the Appellate court. Both the courts have concurrently held against the petitioner / appellant. Now, the petitioner has filed the present application to condone the delay of 820 days in filing the Second appeal.

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3. The petitioner has contended that the copy was made ready on 05.09.2013. The counsel at Krishnagiri was requested to make arrangements to file an appeal before this Court by engaging a counsel at Chennai. But the counsel did not take action in this

regard. Thereafter, the petitioner engaged the present counsel at Chennai during June 2015. On verification, the petitioner was informed that certified copies of the decree of the courts below were not available in the bundle. Therefore, arrangements were made to file a fresh decree copies. In the mean time, the misplaced original certified copies of the decrees were traced and handed over to the present counsel. Hence, there is a delay of 820 days in filing the present appeal. The delay is neither wilful nor wanton.

4. The second respondent has filed counter affidavit stating that after considering the oral and documentary evidence, both the courts have rejected the contention of the plaintiff / appellant and therefore the averments in the affidavit is vague and the condone delay petition has been filed without giving any particulars before this court with inordinate delay of 820 days. Therefore, the said application is liable to be dismissed.

5. The reasons stated in the affidavit for the inordinate delay of 820 days cannot be accepted and the petitioner also not given any particulars for the inordinate delay though it has been stated that the delay was caused in contacting the counsel of lower court and engaging a counsel at Chennai.

6. 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."

7. 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 of 820 days in filing the Second appeal.

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

10.08.2017

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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D.KRISHNAKUMAR.J,

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To

- 1) The Principal Sub Court,
Krishnagiri
- 2) The District Munsif Court,
Krishnagiri



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