



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

Tuesday, the Twenty First day of November Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice S.BASKARAN

CMP(MD) No.1067 of 2017  
IN  
SA(MD) No.SR39781 of 2012

M.GURUSAMY

... PETITIONER/APPELLANT

Vs

1 DESINGH  
2 VELLAIPANDIAN

... 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 1386 days in Representing the Appeal Papers in S.A.S.R.No.39781 of 2012 before this Honourable Court.

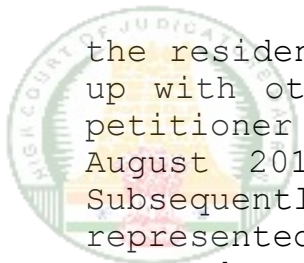
Prayer in SA(MD) No.SR39781 of 2012:-

Memorandum of Second Appeal against the Decree and Judgment passed in A.S.No.27 of 2011 by the Principal Sub Court at Tenkasi on 22.11.2011, confirming the Decree and Judgment passed in O.S.No.521 of 2008 dated 02.12.2010 passed by the Additional District Munsif Court at Tenkasi.

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.S.RAMESH @ RAMIAH, Advocate for the petitioner/appellant and of M/S.M.S.JEYAKARTHIK, Advocate for R1 and R2, the court made the following order:-

The petitioner has come forward with this petition seeking to condone the delay of 1386 days in representing the Second Appeal which was filed in time.

2.The petitioner states that he filed O.S.No.521/2008 on the file of the Additional District Munsif, Tenkasi, for the relief of declaration and injunction against the respondent and the said suit was dismissed by the trial court. Aggrieved over the same the petitioner preferred first appeal and the same was dismissed by Principal Subordinate Judge, Tenkasi. Challenging the same, the petitioner has preferred the present Second Appeal in S.A(MD). No.SR39781 of 2012 on 10.09.2012 and the same was returned by the Registry for rectification of certain mistakes. During October 2012 the petitioner's counsel constructed a new house and shifted his residence from the previous place to new building. While shifting



the residence and office of the counsel, the case bundles have mixed up with other bundle and the same was not traceable. However, the petitioner was suffering from Pneumonia Fever from first week of August 2016 and hence, he was not able to meet his counsel. Subsequently the paper was traced out and the same has been represented with the delay of 1386 days. Hence the petitioner seeks to condone the delay.

3. On the other hand, opposing the petition the learned counsel for the respondent contends that there is an inordinate delay which is nearly 4 years, has occurred in representing the second appeal and no valid reasons are advanced to contend the same. Hence the respondent seeks dismissal of this petition.

4. Considering the reasons stated by the petitioner and the fact that the appeal has been filed in time and the delay has occurred only in representation and that too due to the mistake on the part of the counsel, this court is inclined to entertain this petition on condition.

5. In the result, this petition is allowed on payment of cost of Rs.1,000/- (Rupees One Thousand only) by the petitioner to the respondent on or before 30.11.2017, failing which this petition stand dismissed.

sd/-  
21/11/2017

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

TO

1 THE PRINCIPAL SUBORDINATE JUDGE, TENKASI.

2 THE ADDITIONAL DISTRICT MUNSIF, TENKASI.

COPY TO: THE SECTION OFFICER,  
JUDICIAL SECTION,  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

PK/CM-VR/SAR-I/24.11.2017 :2P/4C

ORDER  
IN  
CMP(MD) No.1067 of 2017  
IN  
SA(MD) No.SR39781 of 2012  
Date :21/11/2017